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[CHAPTER 128.]

AN ACT

February 27, 1933.
[H. R. 7522.]
[Public, No. 376.]

To provide a new civil code for the Canal Zone and to repeal the existing civil code.

Civil Code of Canal Zone.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the seventy-seven chapters hereinafter set forth shall constitute the Civil Code of the Canal Zone.

PRELIMINARY PROVISIONS.

CHAPTER 1.—PRELIMINARY PROVISIONS

Title.

SECTION 1. TITLE OF THIS ACT.—This Act shall be known as the Civil Code of the Canal Zone.

Effective date.

SEC. 2. WHEN THIS CODE TAKES EFFECT.—This code shall take effect on the first day of October, nineteen hundred and thirty-three.

Not retroactive.

SEC. 3. NOT RETROACTIVE.—No part of it is retroactive, unless expressly so declared.

Rules of construction.

SEC. 4. RULES OF CONSTRUCTION.—The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. The code establishes the law of the Canal Zone respecting the subjects to which it relates, and its provisions are to be liberally construed with a view to effect its objects and to promote justice.

Construing provisions similar to existing laws.

SEC. 5. PROVISIONS SIMILAR TO EXISTING LAWS, HOW CONSTRUED.—The provisions of this code, so far as they are substantially the same as existing statutes, must be construed as continuations thereof, and not as new enactments.

Actions, etc., not affected.

SEC. 6. ACTIONS, AND SO FORTH, NOT AFFECTED.—No action or proceeding commenced before this code takes effect, and no right accrued, is affected by its provisions.

Holidays.
Executive Order No. 1888.

SEC. 7. LEGAL HOLIDAYS.—Except as otherwise provided in section 12 of the Executive order of February 2, 1914, as amended, the following are the legal holidays in the Canal Zone: Every Sunday, January 1, February 22, Good Friday, May 30, July 4, Labor Day, November 3, Thanksgiving Day, and December 25. If a legal holiday other than Sunday falls on the first day of the week, the Monday following will be observed as a legal holiday. As far as practicable, all public business will be suspended on these days.

Business days.

SEC. 8. BUSINESS DAYS.—All other days than those mentioned in section 7 are to be deemed business days for all purposes.

Computation of time.

SEC. 9. COMPUTATION OF TIME.—The time in which any act provided by law is to be done is computed by excluding the first day and including the last, unless the last day is a holiday, and then it is also excluded.

Performances on holidays.

SEC. 10. CERTAIN ACTS NOT TO BE DONE ON HOLIDAYS.—Whenever any act of a secular nature, other than a work of necessity or mercy, is appointed by law or contract to be performed upon a particular day, which day falls upon a holiday, it may be performed upon the next business day, with the same effect as if it had been performed upon the day appointed.

Words and phrases, construction.

SEC. 11. WORDS AND PHRASES, HOW CONSTRUED.—Words and phrases are construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, or are defined in section 12, are to be construed according to such peculiar and appropriate meaning or definition.

CROSS REFERENCES

Technical words, how construed, see sections 361 and 556. *Post*, pp. 1173, 1198.
Construction of words in contracts, see sections 555 and 556. *Post*, p. 1198.

SEC. 12. WORDS; DEFINITION; SIGNIFICATION OF WORDS.—Words used in this code in the present tense include the future as well as the present; words used in the masculine gender include the feminine and neuter; the singular number includes the plural, and the plural the singular; the word person includes a corporation as well as a natural person; writing includes printing and typewriting; oath includes affirmation or declaration; and every mode of oral statement, under oath or affirmation, is embraced by the term "testify", and every written one in the term "depose"; signature or subscription includes mark, when the person can not write, his name being written near it, by a person who writes his own name as a witness; provided, that when a signature is by mark it must in order that the same may be acknowledged or may serve as the signature to any sworn statement be witnessed by two persons who must subscribe their own names as witnesses thereto. The following words have in this code the signification attached to them in this section, unless otherwise apparent from the context: Definition; signification.

1. The word "property" includes property real and personal;
2. The words "real property" are coextensive with lands, tenements, and hereditaments;
3. The words "personal property" include money, goods, chattels, things in action, and evidences of debt;
4. The word "month" means a calendar month, unless otherwise expressed;
5. The word "will" includes codicil.

SEC. 13. NOTICE, ACTUAL AND CONSTRUCTIVE.—Notice is: Notice.

1. Actual—which consists in express information of a fact; or, Active.
2. Constructive—which is imputed by law. Constructive.

SEC. 14. CONSTRUCTIVE NOTICE, WHEN DEEMED.—Every person who has actual notice of circumstances sufficient to put a prudent man upon inquiry as to a particular fact, has constructive notice of the fact itself in all cases in which, by prosecuting such inquiry, he might have learned such fact.

CHAPTER 2.—PERSONS

PERSONS.

SECTION 15. MINORS, WHO ARE.—Minors are all persons under twenty-one years of age: *Provided*, That this section shall be subject to the provisions of chapters 4 to 6 of this code and shall not be construed as repealing or limiting the provisions of section 148: *Provided, further*, That upon the lawful marriage of any female of the age of eighteen years or over but under the age of twenty-one years, such female shall be deemed an adult person for the purpose of entering into any engagement or transaction respecting property or any contract, the same as if such person were over twenty-one years of age. Minors.
Provisos.
Construction.
Post, p. 1143.
Married females, of 18 to 21 years.

SEC. 16. PERIODS OF MINORITY, HOW CALCULATED.—The periods specified in section 15 must be calculated from the first minute of the day on which persons are born to the same minute of the corresponding day completing the period of minority. Calculation of periods of minority.

SEC. 17. ADULTS, WHO ARE.—All other persons are adults. Adults.

SEC. 18. UNBORN CHILD.—A child conceived, but not yet born, is to be deemed an existing person, so far as may be necessary for its interests in the event of its subsequent birth. Unborn child, status.

CROSS REFERENCE

Post, pp. 1155, 1157, 1174, 1181. Posthumous children, rights of, see sections 213, 231, 370, and 419.

Minors. Delegation of powers.

SEC. 19. DELEGATION OF POWERS; MINORS.—A minor can not give a delegation of power, nor, under the age of eighteen, make a contract relating to real property, or any interest therein, or relating to any personal property not in his immediate possession or control.

Contracts by.

SEC. 20. CONTRACTS BY MINORS.—A minor may make any other contract than as specified in section 19, in the same manner as an adult, subject only to his power of disaffirmance under the provisions of this chapter, and subject to the provisions of the chapter on marriage.

When may disaffirm.

SEC. 21. WHEN MINOR MAY DISAFFIRM.—In all cases other than those specified in sections 22 and 23, the contract of a minor, if made whilst he is under the age of eighteen, may be disaffirmed by the minor himself, either before his majority or within a reasonable time afterwards; or, in case of his death within that period, by his heirs or personal representatives; and if the contract be made by the minor whilst he is over the age of eighteen, it may be disaffirmed in like manner upon restoring the consideration to the party from whom it was received, or paying its equivalent.

Can not disaffirm contract for necessaries.

SEC. 22. MINOR CAN NOT DISAFFIRM CONTRACT FOR NECESSARIES.—A minor cannot disaffirm a contract, otherwise valid, to pay the reasonable value of things necessary for his support, or that of his family, entered into by him when not under the care of a parent or guardian able to provide for him or them.

Statutory obligations.

SEC. 23. MINOR CAN NOT DISAFFIRM CERTAIN OBLIGATIONS.—A minor can not disaffirm an obligation, otherwise valid, entered into by him under the express authority or direction of a statute.

Contracts by persons without understanding.

SEC. 24. CONTRACTS BY PERSONS WITHOUT UNDERSTANDING.—A person entirely without understanding has no power to make a contract of any kind, but he is liable for the reasonable value of things furnished to him necessary for his support or the support of his family.

CROSS REFERENCE

Post, p. 1191. Contracts of insane persons, see sections 491 and 492.

Unsound mind.

SEC. 25. CONTRACTS BY PERSONS OF UNSOUND MIND.—A contract of a person of unsound mind, but not entirely without understanding, made before his incapacity has been judicially determined, is subject to rescission, as provided in sections 580 to 583.

CROSS REFERENCE

Post, pp. 1201, 1337. Rescission of contracts, see sections 580 to 583 and 1645 to 1647.

Powers of persons whose incapacity has been adjudged.

SEC. 26. POWERS OF PERSONS WHOSE INCAPACITY HAS BEEN ADJUDGED.—After his incapacity has been judicially determined, a person of unsound mind can make no contract, nor delegate any power or waive any right, until his restoration to capacity. But a certificate from the medical superintendent or resident physician of the insane asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Tort liability of minors; exemplary damages.

SEC. 27. MINORS LIABLE FOR WRONGS, BUT NOT LIABLE FOR EXEMPLARY DAMAGES.—A minor, or person of unsound mind, of whatever degree, is civilly liable for a wrong done by him, but is not liable in exemplary damages unless at the time of the act he was capable of knowing that it was wrongful.

Minors may enforce rights.

SEC. 28. MINORS MAY ENFORCE THEIR RIGHTS.—A minor may enforce his rights by civil action, or other legal proceedings, in the same manner as a person of full age, except that a guardian must conduct the same.

PERSONAL RIGHTS.

CHAPTER 3.—PERSONAL RIGHTS

General.

SECTION 29. GENERAL PERSONAL RIGHTS.—Besides the personal rights mentioned or recognized in the Executive Order of May 9, 1904, and in the Code of Criminal Procedure, every person has, subject to the qualifications and restrictions provided by law, the right of protection from bodily restraint or harm, from personal insult, from defamation, and from injury to his personal relations.

Defamation.

SEC. 30. DEFAMATION, WHAT.—Defamation is effected by:

1. Libel;
2. Slander.

Libel.

SEC. 31. LIBEL, WHAT.—Libel is a false and unprivileged publication by writing, printing, picture, effigy, or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes him to be shunned or avoided, or which has a tendency to injure him in his occupation.

CROSS REFERENCE

Privileged publication, see sections 33 and 34.

Slander.

SEC. 32. SLANDER, WHAT.—Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime;
2. Imputes in him the present existence of an infectious, contagious, or loathesome disease;
3. Tends directly to injure him in respect to his office, profession, trade, or business, either by imputing to him general disqualification in those respects which the office or other occupation peculiarly requires, or by imputing something with reference to his office, profession, trade, or business that has a natural tendency to lessen its profits;
4. Imputes to him impotence of a want of chastity; or,
5. Which, by natural consequence, causes actual damage.

Privileged publications.

SEC. 33. PRIVILEGED PUBLICATIONS.—A privileged publication is one made—

1. In the proper discharge of an official duty.
2. In any judicial proceeding, or in any other official proceeding authorized by law: *Provided*, That an allegation or averment contained in any pleading or affidavit filed in an action for divorce or an action prosecuted under section 97 made of or concerning a person by or against whom no affirmative relief is prayed in such action shall not be a privileged publication as to the person making said allegation or averment within the meaning of this section unless such pleading be verified or affidavit sworn to, and be made without malice, by one having reasonable and probable cause for believing the truth of such allegation or averment and unless such allegation or averment be material and relevant to the issues in such action.

Proviso.
Allegation in divorce, etc., proceedings.
Post, p. 1136.

3. In a communication, without malice, to a person interested therein, (1) by one who is also interested, or (2) by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or (3) who is requested by the person interested to give the information.

4. By a fair and true report, without malice, in a public journal, of (1) a judicial or (2) other public official proceeding, or (3) of anything said in the course thereof, or (4) of a verified charge or complaint made by any person to a public official, upon which complaint a warrant shall have been issued.

5. By a fair and true report, without malice, of (1) the proceedings of a public meeting, if such meeting was lawfully convened for a lawful purpose and open to the public, or (2) the publication of the matter complained of was for the public benefit.

Malice not inferred.

SEC. 34. MALICE NOT INFERRED.—In the cases provided for in subdivisions three, four, and five, of section 33, malice is not inferred from the communication or publication.

Personal relations forbid abduction and seduction.

SEC. 35. PERSONAL RELATIONS FORBID ABDUCTION AND SEDUCTION.—The rights of personal relations forbid:

1. The abduction of a husband from his wife, or of a parent from his child.

2. The abduction or enticement of a wife from her husband, or a child from a parent, or from a guardian entitled to its custody.

3. The seduction of daughter or orphan sister.

CROSS REFERENCE

Post, p. 1333.

Damages for seduction, see section 1619.

Right to use force.

SEC. 36. RIGHT TO USE FORCE.—Any necessary force may be used to protect from wrongful injury the person or property of oneself, or of a wife, husband, child, parent, or other relative, or member of one's family, or of a ward, servant, master, or guest.

MARRIAGE.

CHAPTER 4.—MARRIAGE

What constitutes.

SEC. 37. WHAT CONSTITUTES MARRIAGE.—Marriage is a personal relation arising out of a civil contract, to which the consent of parties capable of making that contract is necessary. Consent alone will not constitute marriage; it must be followed by a solemnization authorized by this code.

How proved.

SEC. 38. MARRIAGE; HOW PROVED.—Consent to marriage and solemnization thereof may be proved under the same general rules of evidence as facts are proved in other cases.

When are void.

SEC. 39. WHAT MARRIAGES VOID WITHOUT BEING SO DECREED.—(a) A marriage celebrated in the Canal Zone after December 29, 1926, shall be void, without being so decreed—

Post, p. 1180.

(1) If between persons related by consanguinity within the fourth degree, determined according to sections 405 to 409;

(2) If either party thereto has been previously married and such previous marriage has not been terminated by death, annulment, or a final decree of divorce;

(3) If either party thereto is not present in person at the celebration of the marriage.

By judicial decree. Vol. 44, p. 927.

(b) A void marriage may, in addition, be declared by judicial decree, or be shown in any collateral proceeding, to have been void from the time of its celebration. (Act Cong. Dec. 29, 1926, c. 19, § 8, 44 Stat. 927.)

Voidable.

SEC. 40. WHAT MARRIAGES VOIDABLE.—(a) A marriage celebrated in the Canal Zone after December 29, 1926, shall be voidable—

(1) If either party thereto, at the time of the marriage, is an idiot or a lunatic;

(2) If the consent of either party thereto was procured by force or fraud;

(3) If either party thereto is, at the time of the marriage, incapable, from physical cause, of entering into the marriage state;

(4) If, because of the age of either party thereto, a written consent under section 46 was required, and the marriage was celebrated without such consent; or *Post*, p. 1130.

(5) If, at the time of the marriage, the male is under seventeen or the female is under fourteen years of age.

Valid until judicially annulled.

(b) A voidable marriage shall be held to be valid until it is annulled, by judicial decree, as of the date of such decree. (Acts Cong. Dec. 29, 1926, c. 19, § 9, 44 Stat. 927; Jan. 22, 1927, c. 52, 44 Stat. 1023.) Vol. 44, pp. 928, 1023.

Marriages outside of Canal Zone.

SEC. 41. ANNULMENT OF MARRIAGE CELEBRATED ELSEWHERE.—(a) A marriage celebrated outside of the Canal Zone may be declared void or may be annulled in the same manner and with the same effect as though it had been celebrated in the Canal Zone if the petitioner shall have resided in the Canal Zone within a period of thirty days before and a period of thirty days after the date of such marriage.

Institution of suit by Government.

(b) A suit to have any such marriage celebrated outside the Canal Zone declared void or annulled may, in addition, be instituted by the district attorney for the Canal Zone in the name of the government of the Canal Zone. (Act Cong. Dec. 29, 1926, c. 19, § 10, 44 Stat. 928.) Vol. 44, p. 928.

Jurisdiction of suit.

SEC. 42. JURISDICTION OF ANNULMENT SUIT; WHO MAY INSTITUTE SUIT.—(a) The district court shall have jurisdiction of a suit to have a marriage declared void or annulled.

In case of minors.

(b) In the case of a male under twenty-one or a female under eighteen years of age such suit may be instituted through a next friend or by a parent or guardian. In the case of an idiot or a lunatic such suit may be instituted through a next friend.

Knowledge of voidable circumstances a bar to annulment.

(c) No suit to have a marriage annulled may be instituted by a person who, when fully capable of contracting marriage, entered into such marriage willfully and with knowledge of the circumstances rendering such marriage voidable. (Act Cong. Dec. 29, 1926, c. 19, § 11, 44 Stat. 928.) Vol. 44, p. 928.

Legitimacy of children of annulled marriages.

SEC. 43. LEGITIMACY OF CHILDREN OF ANNULLED MARRIAGES.—A judgment of nullity of marriage does not affect the legitimacy of children begotten before the judgment.

CROSS REFERENCES

Divorce as affecting legitimacy of children, see section 99.	*Post*, p. 1137.
Legitimate children, who are, see sections 136 and 138.	*Post*, p. 1141.
Legitimacy of children of annulled marriage, see section 403.	*Post*, p. 1179.
Presumption of legitimacy of children, see sections 136 and 137.	*Post*, p. 1141.
Who may dispute legitimacy of child, see section 138.	*Post*, p. 1141.

Custody of.

SEC. 44. CUSTODY OF CHILDREN OF ANNULLED MARRIAGES.—The court must award the custody of the children of a marriage annulled on the ground of fraud or force to the innocent parent, and may also provide for their education and maintenance out of the property of the guilty party.

Effect of judgment of nullity.

SEC. 45. EFFECT OF JUDGMENT OF NULLITY.—A judgment of nullity of marriage rendered is conclusive only as against the parties to the action and those claiming under them.

CROSS REFERENCE

Effect of decree of divorce, see section 98.	*Post*, p. 1137.

Age restriction of minors.

SEC. 46. CAPABILITY OF MINORS TO CONTRACT MARRIAGE.—(a) Except as provided in subdivision (b), a male under twenty-one years of age or a female under eighteen years of age may not enter into a marriage in the Canal Zone.

Consent of parents, etc.

(b) A male seventeen years of age or over and under twenty-one years of age, or a female fourteen years of age or over and under eighteen years of age, may enter into a marriage with the written consent of his or her natural or adopted parents, or of the parent having custody of such male or female if such parents are divorced, or of one of such parents if the other is dead, or has deserted his or her family, or has been adjudged insane or a lunatic, or of a legally appointed guardian if there is no parent qualified to give such consent. (Act Cong. Dec. 29, 1926, c. 19, § 12, 44 Stat. 928.)

Vol. 44, p. 928.

License.

SEC. 47. APPLICATION FOR AND ISSUANCE OF LICENSE; FEE.—(a) No marriage shall be celebrated in the Canal Zone unless a license to marry has first been secured from the clerk of the division of the district court in which the marriage is to be celebrated: *Provided, however*, That no marriage license shall be granted unless one of the parties thereto is an American citizen, or a resident of the Canal Zone: *And provided further*, That no marriage license shall be issued to a leper except upon a certificate of approval by the Chief Health Officer of the Canal Zone. Such license when issued shall be accompanied by a marriage certificate to be filled in by the person celebrating the marriage.

Provisos.
Citizenship requirement.

Lepers.

Issue by clerk.

(b) Such clerk shall, upon application therefor in accordance with subdivision (c), accompanied by the written consent when required by subdivision (b) of section 46, issue a license to marry if it appears to the satisfaction of such clerk from the sworn statement of the persons desiring to marry, or, if required by such clerk, from the sworn statement of another, that no legal impediment to the marriage is known to exist.

Statement required.

(c) The application for a license to marry shall state—

(1) The name, address, age, color, and race of each of the persons to be married;

(2) The relationship, if any, of such persons, by consanguinity or affinity;

(3) If either of such persons has been previously married, then the date and place of each previous marriage, the name of each person to whom previously married, and the manner in which each such marriage has been terminated.

(d) The governor shall prescribe the form of the application for a license to marry, of the license to marry, and of the marriage certificate.

Fee.

(e) The clerk shall be paid a fee of $2 upon the issuance of a license to marry, and shall keep a record of all licenses issued and of all applications for licenses, together with any written consent of parents or a parent or guardian or the chief health officer accompanying the same. Such fee shall be disposed of in the same manner as other fees received by such clerk. (Acts Cong. Dec. 29, 1926, c. 19, § 13, 44 Stat. 928; Jan. 22, 1927, c. 52, 44 Stat. 1023.)

Vol. 44, pp. 928, 1023.

Celebration of marriages.
Who authorized.

SEC. 48. WHO MAY CELEBRATE MARRIAGES; LICENSE TO CELEBRATE MARRIAGES.—(a) A marriage may be celebrated in the Canal Zone only by—

(1) A magistrate of the Canal Zone.

(2) A minister in good standing in any religious society or denomination who resides in the Canal Zone.

Republic of Panama.

(3) A minister in good standing in any religious society or denomination who resides in the city of Colon or the city of Panama, in the Republic of Panama, if he has procured from the clerk of the district court for the Canal Zone a license authorizing such minister to celebrate marriages in the Canal Zone.

License to minister in Panama.

(b) The clerk shall issue the license provided for in paragraph (3) of subdivision (a) to any such minister if such clerk is satisfied that such minister is qualified to celebrate marriages in the Canal Zone. The clerk shall be paid a fee of $2 for issuing and recording any such license. Such fee shall be disposed of in the same manner as other fees received by such clerk. (Act Cong. Dec. 29, 1926, c. 19, § 14, 44 Stat. 929.)

Vol. 44, p. 929.

Marriage certificate, etc.

SEC. 49. CERTIFYING, SIGNING, RETURN, AND RECORDING OF LICENSE; MARRIAGE CERTIFICATE.—(a) The judicial officer or minister celebrating a marriage shall—

(1) Certify upon the marriage license that he celebrated such marriage, giving his official title and the time when and place where such marriage was celebrated;

(2) Cause two persons who witnessed the marriage to sign their names on the marriage license as witnesses, each giving his place of residence;

(3) At the time of the marriage, fill out and sign the marriage certificate accompanying the license and deliver it to one of the parties to the marriage; and

(4) Within thirty days after the date of the marriage, return such license, so certified and witnessed, to the clerk who issued such license.

Return of certified license.

(b) Upon return of a license as required in subdivision (a), the clerk shall file the same after making registry thereof in a book to be kept in his office for that purpose only, such registry to contain the Christian and surnames of the parties, the time of their marriage, and the name and title of the person who celebrated the marriage. (Act Cong. Dec. 29, 1926, c. 19, § 15, 44 Stat. 929.)

Vol. 44, p. 929.

Violations; punishment.

SEC. 50. VIOLATIONS OF PROVISIONS OF THIS CHAPTER; PUNISHMENT.—(a) Any judicial officer or minister who is qualified to celebrate marriages in the Canal Zone and any clerk of court who violates any of the provisions of sections 47, 48, or 49 shall be deemed guilty of a misdemeanor and shall, upon conviction thereof, be punished by a fine of not more than $25, or by imprisonment for not more than thirty days, or both.

Ante, p. 1130.

(b) Any person who knowingly makes or causes to be made any false oath as to any material matter for the purpose of procuring or aiding another to procure a marriage license shall be deemed guilty of perjury and shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than ten years.

(c) Any person who knowingly files or causes to be filed with the clerk a written consent, any signature to which is a forgery, shall be deemed guilty of uttering a forged instrument and shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than fourteen years.

(d) Any person who is not qualified to celebrate marriages in the Canal Zone under this chapter and who celebrates in the Canal Zone what purports to be a marriage ceremony shall, upon conviction thereof, be punished by imprisonment in the penitentiary for not more than three years. (Acts Cong. Dec. 29, 1926, c. 19, § 16, 44 Stat. 929; Jan. 22, 1927, c. 52, 44 Stat. 1023.)

Vol. 44, p. 929.

Declaration where no record exists.

SEC. 51. DECLARATION WHERE THERE IS NO RECORD.—If no record of the solemnization of a marriage heretofore contracted, be known to exist, the parties may join in a written declaration of such marriage, substantially showing:

(1) The names, ages, and residences of the parties.

(2) The fact of marriage.

(3) That no record of such marriage is known to exist. Such declaration must be subscribed by the parties and attested by at least three witnesses.

To be acknowledged and recorded.

SEC. 52. TO BE ACKNOWLEDGED AND RECORDED.—Declarations of marriage must be acknowledged and recorded in the office of the clerk of the district court.

Validity. Either party may test.

SEC. 53. EITHER PARTY MAY PROCEED TO TEST VALIDITY OF MARRIAGE.—If either party to any marriage denies the same, or refuses to join in a declaration thereof, the other may proceed, by action in the district court, to have the validity of the marriage determined and declared.

Contracted without the Zone. *Ante*, p. 1129.

SEC. 55. MARRIAGES CONTRACTED WITHOUT THE ZONE.—Except as otherwise provided in section 41, all marriages contracted without the Canal Zone, which would be valid by the laws of the country in which the same were contracted, are valid in the Canal Zone.

DIVORCE.

CHAPTER 5.—DIVORCE

Cross references.

CROSS REFERENCES

Vol. 42, p. 1010. Admission of defendant as evidence, see section 16 of Act Sept. 21, 1922, c. 370, 42 Stat. 1010.

Vol. 42, p. 1010. Cross complaint for divorce and proceedings thereon, see section 19 of Act Sept. 21, 1922, c. 370, 42 Stat. 1010.

Vol. 42, p. 1010. Practice in general in suits for divorce, see section 16, as amended, of Act Sept. 21, 1922, c. 370, 42 Stat. 1010.

Vol. 42, p. 1010. Process and service thereof in suits for divorce, see section 16, as amended, of Act Sept. 21, 1922, c. 370, 42 Stat. 1010.

Vol. 42, p. 1010. Time for appearance and answer, see section 16, as amended, of Act Sept. 21, 1922, c. 370, 42 Stat. 1010.

Vol. 42, p. 1008. Venue of suits for divorce, see section 13 of Act Sept. 21, 1922, c. 370, 42 Stat. 1008.

CAUSES FOR DIVORCE

Causes.

SEC. 60. CAUSES FOR DIVORCE.—In every case in which a marriage has been, or hereafter may be, contracted and solemnized between any two persons, and it shall be adjudged, in the manner hereinafter provided, (1) that either party has committed adultery subsequent to the marriage except as hereinafter provided; or (2) has willfully deserted and absented herself or himself from the husband or wife without any reasonable cause for a period of two years; or (3) has been guilty of willful neglect which shall consist of the willful failure of the husband to provide for his wife the necessaries of life, he having the ability to do so, or the willful failure to do so by reason of voluntary idleness, profligacy, or dissipation, in either case continued for a period of one year; or (4) has been guilty of habitual drunkenness for the space of two years; or (5) has attempted the life of the other by any means showing malice; or (6) has been guilty of extreme cruelty; or (7) has been subsequent to the marriage, convicted of felony, it shall be lawful for the injured party to obtain a divorce and dissolution of such marriage contract in the district court of the Canal Zone. (Act Cong. Sept. 21, 1922, c. 370, § 12, 42 Stat. 1008.)

Vol. 42, p. 1008.

"Adultery," defined.

SEC. 61. ADULTERY DEFINED.—Adultery is the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife.

"Desertion," defined.

SEC. 62. DESERTION, WHAT.—Willful desertion is the voluntary separation of one of the married parties from the other with intent to desert.

How manifested.

SEC. 63. DESERTION, HOW MANIFESTED.—Persistent refusal to have reasonable matrimonial intercourse as husband and wife, when health or physical condition does not make such refusal reasonably necessary, or the refusal of either party to dwell in the same house with the other party, when there is no just cause for such refusal, is desertion.

Offending party. In case of stratagem, etc.

SEC. 64. IN CASE OF STRATAGEM OR FRAUD, WHO COMMITS DESERTION.—When one party is induced, by the stratagem or fraud of the other party, to leave the family dwelling-place, or to be absent, and during such absence the offending party departs with intent to desert the other, it is desertion by the party committing the stratagem or fraud, and not by the other.

In case of cruelty.

SEC. 65. IN CASE OF CRUELTY, WHERE ONE PARTY LEAVES OTHER, WHO COMMITS DESERTION.—Departure or absence of one party from the family dwelling-place, caused by extreme cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other, is not desertion by the absent party, but it is desertion by the other party.

Separation, not desertion.

SEC. 66. SEPARATION BY CONSENT NOT DESERTION.—Separation by consent, with or without the understanding that one of the parties will apply for a divorce, is not desertion.

CROSS REFERENCES

Agreement for separation, see section 114. *Post*, p. 1139.
Consent revocable, see section 68.

When absence becomes desertion.

SEC. 67. ABSENCE BECOMES DESERTION, WHEN.—Absence or separation, proper in itself, becomes desertion whenever the intent to desert is fixed during such absence or separation.

Consent to separate revocable.

SEC. 68. CONSENT TO SEPARATE REVOCABLE.—Consent to a separation is a revocable act, and if one of the parties afterwards, in good faith, seeks a reconciliation and restoration, but the other refuses it, such refusal is desertion.

Desertion, how cured; refusing condonation.

SEC. 69. DESERTION, HOW CURED; EFFECT OF REFUSING CONDONATION.—If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of divorce, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuse such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

Selection of home, etc.

SEC. 70. WIFE MUST ABIDE BY HUSBAND'S SELECTION OF HOME, OR IT IS DESERTION ON HER PART.—The husband may choose any reasonable place or mode of living, and if the wife does not conform thereto, it is desertion.

If place unfit.

SEC. 71. IF PLACE IS UNFIT, AND WIFE REFUSES TO CONFORM, IT IS DESERTION BY HUSBAND.—If the place or mode of living selected by the husband is unreasonable and grossly unfit, and the wife does not conform thereto, it is desertion on the part of the husband from the time her reasonable objections are made known to him.

Habitual intemperance.

SEC. 72. HABITUAL INTEMPERANCE, WHAT.—Habitual drunkenness is that degree of intemperance from the use of intoxicating drinks which disqualifies the person a great portion of the time from properly attending to business, or which would reasonably inflict a course of great mental anguish upon the innocent party.

Extreme cruelty.

SEC. 73. EXTREME CRUELTY, WHAT.—Extreme cruelty is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage.

CAUSES FOR DENYING DIVORCE

Denial of divorce.

Reasons.

SEC. 74. DIVORCES DENIED, ON SHOWING WHAT.—Divorces must be denied upon showing:

1. Connivance; or,
2. Collusion; or,
3. Condonation; or,
4. Recrimination; or,
5. Limitation and lapse of time.

CROSS REFERENCES

Connivance, see section 75.
Collusion, see section 77.
Condonation, see sections 78 et seq.
Post, p. 1135. Recrimination, see sections 85 et seq.
Post, p. 1135. Limitation and lapse of time, see sections 87 et seq.

Connivance.

SEC. 75. CONNIVANCE, WHAT.—Connivance is the corrupt consent of one party to the commission of the acts of the other, constituting the cause of divorce.

Corrupt consent.

SEC. 76. CORRUPT CONSENT, HOW MANIFESTED.—Corrupt consent is manifested by passive permission, with intent to connive at or actively procure the commission of the acts complained of.

Collusion.

SEC. 77. COLLUSION, WHAT.—Collusion is an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of divorce, for the purpose of enabling the other to obtain a divorce.

Condonation.

SEC. 78. CONDONATION, WHAT.—Condonation is the conditional forgiveness of a matrimonial offense constituting a cause of divorce.

CROSS REFERENCES

Post, p. 1135. Revoking condonation, see section 84.
Condonation of a recriminatory defense, see section 86.

Elements of.

SEC. 79. REQUISITES TO CONDONATION.—The following requirements are necessary to condonation:

1. A knowledge on the part of the condoner of the facts constituting the cause of divorce;

2. Reconciliation and remission of the offense by the injured party;

3. Restoration of the offending party to all marital rights.

Implication of.

SEC. 80. CONDONATION IMPLIES WHAT.—Condonation implies a condition subsequent; that the forgiving party must be treated with conjugal kindness.

Evidence of.

SEC. 81. EVIDENCE OF CONDONATION.—Where the cause of divorce consists of a course of offensive conduct, or arises, in cases of cruelty, from excessive acts of ill-treatment which may, aggregately, constitute the offense, cohabitation, or passive endurance, or conjugal kindness, shall not be evidence of condonation of any of the acts constituting such cause, unless accompanied by an express agreement to condone.

When can be made.

SEC. 82. CONDONATION; CAN ONLY BE MADE WHEN.—In cases mentioned in section 81, condonation can be made only after the cause of divorce has become complete, as to the acts complained of.

Concealment of facts.

SEC. 83. CONCEALMENT OF FACTS IN CERTAIN CASES MAKES CONDONATION VOID.—A fraudulent concealment by the condonee of facts constituting a different cause of divorce from the one condoned, and existing at the time of condonation, avoids such condonation.

How revoked.

SEC. 84. CONDONATION, HOW REVOKED.—Condonation is revoked and the original cause of divorce revived:

1. When the condonee commits acts constituting a like or other cause of divorce; or,

2. When the condonee is guilty of great conjugal unkindness, not amounting to a cause of divorce, but sufficiently habitual and gross to show that the conditions of condonation had not been accepted in good faith, or not fulfilled.

Recrimination.

SEC. 85. RECRIMINATION, WHAT.—Recrimination is a showing by the defendant of any cause of divorce against the plaintiff, in bar of the plaintiff's cause of divorce.

When condonation is a bar to defense.

SEC. 86. CONDONATION; WHEN TO BAR DEFENSE.—Condonation of a cause of divorce, shown in the answer as a recriminatory defense, is a bar to such defense, unless the condonation be revoked, as provided in section 84, or two years have elapsed after the condonation, and before the accruing or completion of the cause of divorce against which the recrimination is shown.

Ante, p. 1134.

Denial of divorce.

SEC. 87. DIVORCE, WHEN DENIED.—A divorce must be denied:

(1) When the cause is adultery and the action is not commenced within two years after the commission of the act of adultery, or after its discovery by the injured party; or,

(2) When the cause is conviction of felony, and the action is not commenced before the expiration of two years after a pardon, or the termination of the period of sentence.

(3) In all other cases when there is an unreasonable lapse of time before the commencement of the action.

Certain presumptions established by lapse of time.

SEC. 88. LAPSE OF TIME ESTABLISHES CERTAIN PRESUMPTIONS.—Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense.

Rebuttal.

SEC. 89. PRESUMPTIONS MAY BE REBUTTED.—The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

Limitation of time.

SEC. 90. LIMITATION OF TIME.—There are no limitations of time for commencing actions for divorce, except such as are contained in section 87.

Residence of plaintiff in divorce suit.

SEC. 91. RESIDENCES OF PLAINTIFF IN SUIT FOR DIVORCE.—(a) Any person having an official residence within the territorial limits of the Canal Zone, or who resides therein for the purpose of any occupation or employment, shall, during such residence, be deemed a resident of the Canal Zone for the purpose of this chapter and sections 13, 15, 16, and 19 of Act September 21, 1922, as amended, notwithstanding that he or she may not have acquired a permanent domicile within the Canal Zone.

Vol. 42, p. 1008–1010; Vol. 44, p. 927.

Residence requirements.

(b) No plaintiff shall be entitled to a divorce in pursuance of the provisions of said sections who has not actually resided on the Canal Zone continuously during the whole year next before the filing of his or her complaint, which residence shall be duly proven by the plaintiff to the satisfaction of the court by at least two witnesses who are residents of the Canal Zone; and the plaintiff shall file with the complaint his or her own affidavit, in which he or she shall state the length of time plaintiff has resided on the Canal Zone, the place or places where he or she has resided for the last preceding year, and his or her office or occupation. (Act Cong. Sept. 21, 1922, c. 370, § 13 as modified, 42 Stat. 1008.)

Vol. 42, p. 1008.

CROSS REFERENCE

Venue in suit for divorce, see section 13 of Act of September 21, 1922, c. 370, 42 Stat. 1008.

Vol. 42, p. 1008.

GENERAL PROVISIONS

General provisions.

How marriage is dissolved.

SEC. 92. MARRIAGE, HOW DISSOLVED.—Marriage is dissolved only:

(1) By the death of one of the parties; or

(2) By the judgment of a court of competent jurisdiction decreeing a divorce of the parties.

Custody, etc., of children pending suit.

SEC. 93. CUSTODY AND CARE OF CHILDREN PENDING SUIT.—The court may, on the application of either party, make such order concerning the custody and care of the minor children of the parties during the pendency of the suit as may be deemed expedient and for the benefit of the children. (Act Cong. Sept. 21, 1922, c. 370, § 17, 42 Stat. 1010.)

Vol. 42, p. 1010.

Alimony.

SEC. 94. ALIMONY PENDING SUIT.—In all cases of divorce the court may require the husband to pay to the wife or pay into court for her use during the pendency of the suit such sum or sums of money as may enable her to maintain or defend the suit; and in every suit for divorce, the wife, when it is just and equitable, shall be entitled to alimony during the pendency of the suit. And in case of appeal or writ of error by the husband, the district court may grant and enforce the payment of such money for her defense and such equitable alimony during the pendency of the appeal or writ of error as to the court shall seem reasonable and proper. (Act. Cong. Sept. 21, 1922, c. 370, § 20, 42 Stat. 1010.)

Vol. 42, p. 1010.

CROSS REFERENCE

Post, p. 1138.

Property resorted to in executing this section, see section 102.

When bill is taken as confessed; default.

SEC. 95. WHEN BILL IS TAKEN AS CONFESSED; DEFAULT.—If the bill is taken as confessed, the court shall proceed to hear the cause by examination of witnesses in open court, and in no case of default shall the court grant a divorce unless the judge is satisfied that all proper means have been taken to notify the defendant of the pendency of the suit, and that the cause of divorce has been fully proven by competent evidence. Whenever the district judge is satisfied that the interests of the defendant require it, the court may order such additional notice as equity may seem to require. (Act Cong. Sept. 21, 1922, c. 370, § 16, 42 Stat. 1010.)

Vol. 42, p. 1010.

Maintenance by husband where divorce denied.

SEC. 96. MAINTENANCE BY HUSBAND WHERE DIVORCE DENIED.—Though judgment of divorce is denied, the court may, in an action for divorce, provide for the maintenance by the husband, of the wife and children of the marriage, or any of them.

CROSS REFERENCES

Post, p. 1137.

Alimony generally, see section 101.

Post, p. 1138.

Property resorted to in executing this section, see section 102.

Action for maintenance.

SEC. 97. ACTION FOR PERMANENT SUPPORT OF WIFE.—When the husband willfully deserts the wife or when the husband willfully fails to provide for the wife or when the wife has any cause of action for divorce as provided in section 60, she may, without applying for divorce, maintain in the district court an action against him for permanent support and maintenance of herself or of herself and children. During the pendency of such action the court may, in its discretion, require the husband to pay as alimony any money necessary for the prosecution of the action and for support and maintenance, and execution may issue therefor in the discretion of the court. The court, in granting the wife permanent support and maintenance of herself, or of herself and children, in any such action, shall make the same disposition of the community property as would have been made if the marriage had been dissolved by the decree of a court of competent jurisdiction. The final judgment in such action may be enforced by the court by such order or orders as in its discretion it may from time to time deem necessary, and such order or orders may be varied, altered, or revoked at the discretion of the court.

Ante, p. 1132.

CROSS REFERENCE

Property resorted to in executing this section, see section 102. *Post*, p. 1138.

SEC. 98. EFFECT OF DIVORCE IN GENERAL.—The effect of a judgment decreeing a divorce is to restore the parties to the state of unmarried persons. Effect of divorce in general.

SEC. 99. LEGITIMACY OF CHILDREN.—No divorce shall in anywise affect the legitimacy of the children of such marriage. (Act Cong. Sept. 21, 1922, c. 370, § 18, 42 Stat. 1010.) Legitimacy of children. Vol. 42, p. 1010.

CROSS REFERENCES

Issue of marriage dissolved by divorce legitimate, see section 403. *Post*, p. 1179.
Legitimacy of children of annulled marriages, see section 43. *Ante*, p. 1129.

SEC. 100. INTERLOCUTORY ORDER AND APPEAL THEREFROM; FINAL DECREE OF DIVORCE.—(a) No final decree granting a divorce shall be entered until after the expiration of the period of six months from the date of the entry of an interlocutory order adjudging that a case for divorce has been proved, and every such interlocutory order shall expressly state that no divorce is granted by it. An appeal may be taken from any such interlocutory order in the same manner and within the same time as an appeal from a final decree of such court in any other proceeding. Interlocutory order. Appeal.

(b) After the expiration of such period of six months, or if an appeal is taken and the case is pending at the time of the expiration of such period then after the final disposition of the case if determined in favor of the plaintiff, the court, upon application filed within thirty days after the expiration of such period or such final disposition, by the person in whose favor such interlocutory order was entered, shall enter a final decree granting a divorce. If no such application is made, the court may, on its own motion, within three months after the expiration of such thirty-day period, enter a final decree of divorce. No appeal may be taken from such final decree. Final decree. Vol. 42, p. 1011; Vol. 44, p. 926.

(Act Cong. Sept. 21, 1922, c. 370, § 21, 42 Stat. 1011; Act Cong. Dec. 29, 1926, c. 19, § 5 as modified, 44 Stat. 926.)

SEC. 101. ALIMONY AND MAINTENANCE; CARE, CUSTODY, AND SUPPORT OF CHILDREN.—When a divorce shall be decreed the court may make such order touching the alimony and maintenance of the wife, the care, custody, and support of the children, or any of them as, from the circumstances of the parties and the nature of the case, shall be reasonable and just, and in case the wife be plaintiff, to order the defendant to give reasonable security for such alimony and maintenance, or may enforce the payment of such alimony and maintenance in any other manner consistent with the rules and practice of the court. And the court may, on application, from time to time make such alterations in the allowance of alimony and maintenance and the care, custody, and support of the children as shall appear reasonable and proper. In decreeing a divorce to the wife the court may order the husband to pay alimony in a gross sum or in installments as may seem best. And it may make such orders and enforce the same by attachment and secure the payment of such alimony, but judgment for alimony can not be taken when the defendant is not personally served with summons or does not voluntarily appear. (Act Cong. Sept. 21, 1922, c. 370, § 20, 42 Stat. 1010.) Alimony and maintenance; care, etc., of children. Security for alimony. Vol. 42, p. 1010.

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CROSS REFERENCE

Property resorted to in executing this section, see section 102.

Property subject to alimony, etc., orders. *Ante*, pp. 1136, 1137.

SEC. 102. COURT SHALL RESORT TO WHAT, IN EXECUTING CERTAIN SECTIONS.—In executing sections 94, 96, 97, and 101, the court must resort:

1. To the community property; then,

2. To the separate property of the husband.

When wife has sufficient for her support.

SEC. 103. IF WIFE HAS SUFFICIENT FOR HER SUPPORT, COURT MAY WITHHOLD ALLOWANCE.—When the wife has either a separate estate, or there is community property sufficient to give her alimony or a proper support, the court, in its discretion, may withhold any allowance to her out of the separate property of the husband.

Support, etc., of children from community, etc., property.

SEC. 104. COMMUNITY AND SEPARATE PROPERTY MAY BE SUBJECTED TO SUPPORT AND EDUCATE CHILDREN.—The community property and the separate property may be subjected to the support and education of the children in such proportions as the court deems just.

Disposition of community property.

SEC. 105. DISPOSITION OF COMMUNITY PROPERTY ON DIVORCE.—In case of the dissolution of the marriage by the decree of a court of competent jurisdiction, the community property shall be assigned to the respective parties in such proportions as the court, from all the facts of the case, and the condition of the parties, may deem just.

Order for.

SEC. 106. SAME.—The court, in rendering a decree of divorce, must make such order for the disposition of the community property, as in this chapter provided, and, whenever necessary for that purpose, may order a partition or sale of the property and a division or other disposition of the proceeds.

Conveyance of property equitably belonging to other spouse.

SEC. 107. COMPELLING CONVEYANCE OF PROPERTY BELONGING TO OTHER SPOUSE.—Whenever a divorce is granted, if it shall appear to the court that either party holds the title to property equitably belonging to the other, the court may compel conveyance thereof to the party entitled to the same, upon such terms as it shall deem equitable. (Act Cong. Sept. 21, 1922, c. 370, § 20, 42 Stat. 1010.)

Vol. 42, p. 1010.

Resumption of maiden, etc., name. Vol. 42, p. 1010.

SEC. 108. RESUMPTION OF MAIDEN OR FORMER HUSBAND'S NAME.—The court, upon granting to a woman a divorce from the bonds of matrimony, may allow her to resume her maiden name or the name of any former husband. (Act Cong. Sept. 21, 1922, c. 370, § 20, 42 Stat. 1010.)

Decrees, etc., prior to September 21, 1922, legalized.

SEC. 109. DECREES AND ORDERS PRIOR TO SEPTEMBER 21, 1922, LEGALIZED.—All proceedings in the district court of the Canal Zone, wherein and whereby a decree of divorce was granted prior to September 21, 1922, upon personal service, or service by publication, and wherein other orders were made affecting the status of the parties or their children, are hereby legalized. (Act Cong. Sept. 21, 1922, c. 370, § 22, 42 Stat. 1011.)

Vol. 42, p. 1011.

HUSBAND AND WIFE.

CHAPTER 6.—HUSBAND AND WIFE

Mutual obligations.

SECTION 110. MUTUAL OBLIGATIONS OF HUSBAND AND WIFE.—Husband and wife contract towards each other obligations of mutual respect, fidelity, and support.

CROSS REFERENCES

Post, p. 1142. Mother aiding in support of children, see section 140.

Post, p. 1141. Husband's support of wife, see sections 129 and 130.

Ante, p. 1133. Husband's selection of dwelling place, etc., see section 70.

Rights of husband.

SEC. 111. RIGHTS OF HUSBAND, AS HEAD OF FAMILY.—The husband is the head of the family. He may choose any reasonable place or mode of living, and the wife must conform thereto.

CROSS REFERENCES

Parent changing residence of child, see section 157. *Post*, p. 1144.
Wife's support of husband, see section 131. *Post*, p. 1141.

Property interests separate.

SEC. 112. IN OTHER RESPECTS THEIR INTERESTS SEPARATE.—Neither husband nor wife has any interest in the property of the other, but neither can be excluded from the other's dwelling.

Individual contractual rights.

SEC. 113. HUSBAND AND WIFE MAY MAKE CONTRACTS.—Either husband or wife may enter into any engagement or transaction with the other, or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the actions of persons occupying confidential relations with each other, as defined by chapters 49 and 50 on trusts. *Post*, pp. 1258–1261.

Alteration of legal status.

SEC. 114. HUSBAND AND WIFE; PROPERTY RELATIONS.—A husband and wife can not, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.

CROSS REFERENCE

Marriage settlements, see sections 132 to 134. *Post*, p. 1141.

Consideration for agreement of separation.

SEC. 115. CONSIDERATION FOR AGREEMENT OF SEPARATION.—The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in section 114.

How property may be held.

SEC. 116. MAY HOLD PROPERTY HOW.—A husband and wife may hold property by joint interests, by interests in common, or as community property.

Separate property of wife.

SEC. 117. SEPARATE PROPERTY OF THE WIFE.—All property of the wife, owned by her before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is her separate property. The wife may, without the consent of her husband, convey her separate property.

Separate property of husband.

SEC. 118. SEPARATE PROPERTY OF THE HUSBAND.—All property owned by the husband before marriage, and that acquired afterwards by gift, bequest, devise, or descent, with the rents, issues, and profits thereof, is his separate property.

CROSS REFERENCES

Community property, see section 202. *Post*, p. 1154.
Community property liable for what debts, see section 122. *Post*, p. 1140.
Husband's control over community property, see section 128. *Post*, p. 1140.
Descent of community property, see sections 417 and 418. *Post*, p. 1181.

Property acquired after marriage.

SEC. 119. PROPERTY ACQUIRED AFTER MARRIAGE.—All other property acquired after marriage by either husband or wife, or both, including personal property wherever situated, heretofore or hereafter acquired while domiciled elsewhere, which would not have been the separate property of either if acquired while residing in the Canal Zone, is community property; but whenever personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing the presumption is that the same is her separate property, and if acquired by such married woman and her husband, or by her and any other person, the presumption is that she takes the part acquired by her, as an interest in common, unless a different intention is expressed in the instrument; and the presumptions in this section mentioned are conclusive in favor of a purchaser, encumbrancer, payor, or any other person dealing with such married woman, in good faith and for a valuable consideration.

CROSS REFERENCE

Post, p. 1154. See, also, section 202.

Inventory of separate property of wife.

SEC. 120. INVENTORY OF SEPARATE PROPERTY OF WIFE.—A full and complete inventory of the separate personal property of the wife may be made out and signed by her, acknowledged or proved in the manner required by chapter 22 of this code, and recorded in the office of the registrar of property.

Post, p. 1164.

Filing inventory, notice of title.

SEC. 121. FILING INVENTORY NOTICE OF WIFE'S TITLE.—The filing of the inventory in the office of the registrar of property is notice and prima facie evidence of the title of the wife.

Community property; wife's contracts.

SEC. 122. COMMUNITY PROPERTY; CONTRACTS BY WIFE.—The property of the community is not liable for the contracts of the wife, made after marriage, unless secured by mortgage thereof executed by the husband.

CROSS REFERENCES

Post, p. 1141. Debts of wife, see sections, 125, 126, and 129.

Community property is liable for husband's debts, see section 128.

Post, p. 1141. Necessaries furnished wife, see section 129.

Wife's earnings.

SEC. 123. EARNINGS OF WIFE NOT LIABLE FOR DEBTS OF THE HUSBAND.—The earnings of the wife are not liable for the debts of the husband.

Wife's earnings, when living separate.

SEC. 124. EARNINGS OF WIFE, WHEN LIVING SEPARATE, SEPARATE PROPERTY.—The earnings and accumulations of the wife, while she is living separate from her husband, are her separate property.

Liability for antenuptial debts of wife.

SEC. 125. LIABILITY FOR DEBTS OF WIFE CONTRACTED BEFORE MARRIAGE.—The separate property of the husband is not liable for the debts of the wife contracted before the marriage.

Liability of wife's property.

SEC. 126. LIABILITY OF SEPARATE PROPERTY OF WIFE.—The separate property of the wife is liable for her own debts contracted before or after her marriage, but is not liable for her husband's debts; provided, that the separate property of the wife is liable for the payment of debts contracted by the husband or wife for the necessaries of life furnished to them or either of them while they are living together; provided, that the provisions of the foregoing proviso shall not apply to the separate property of the wife held by her at the time of her marriage or acquired by her by devise, succession, or gift, other than by gift from the husband, after marriage.

Necessaries.

Married woman's torts.

SEC. 127. MARRIED WOMAN'S TORTS.—For civil injuries committed by a married woman, damages may be recovered from her alone, and her husband shall not be liable therefor, except in cases where he would be jointly liable with her if the marriage did not exist.

Management of communal personalty.

SEC. 128. MANAGEMENT OF COMMUNITY PERSONAL PROPERTY.—The husband has the management and control of the community personal property, with like absolute power of disposition, other than testamentary, as he has of his separate estate: *Provided*, *however*, That he can not make a gift of such community personal property, or dispose of the same without a valuable consideration, or sell, convey, or encumber the furniture, furnishings, or fittings of the home, or the clothing or wearing apparel of the wife or minor children that is community, without the written consent of the wife.

Proviso. Disposal without valuable consideration.

CROSS REFERENCES

Ante, p. 1139. Community property generally, see section 119.

Ante, p. 1138. Dissolution of the community by divorce, see section 106.

Post, p. 1181. Testamentary control over community property, see sections 417 and 418.

Support of wife, liability for.

SEC. 129. SUPPORT OF WIFE.—If the husband neglects to make adequate provision for the support of his wife, except in the cases mentioned in section 130, any other person may, in good faith, supply her with articles necessary for her support, and recover the reasonable value thereof from the husband.

When wife abandons husband.

SEC. 130. HUSBAND NOT LIABLE WHEN ABANDONED BY WIFE.—A husband abandoned by his wife is not liable for her support until she offers to return, unless she was justified, by his misconduct, in abandoning him; nor is he liable for her support when she is living separate from him, by agreement, unless such support is stipulated in the agreement.

When wife must support husband.

SEC. 131. WHEN WIFE MUST SUPPORT HUSBAND.—The wife must support the husband when he has not deserted her, out of her separate property, when he has no separate property, and there is no community property, and he is unable, from infirmity, to support himself.

CROSS REFERENCE

Mutual obligations of support, see section 110. *Ante*, p. 1138.

Property rights of husband and wife.

SEC. 132. RIGHTS OF HUSBAND AND WIFE GOVERNED BY WHAT.—The property rights of husband and wife are governed by this chapter, unless there is a marriage settlement containing stipulations contrary thereto.

Marriage settlement contracts.

SEC. 133. MARRIAGE SETTLEMENT CONTRACTS, HOW EXECUTED.—All contracts for marriage settlements must be in writing; subscribed by the party to be charged or by his agent thereunto authorized in writing; and acknowledged or proved in the manner prescribed in chapter 22 of this code.

Minors may make.

SEC. 134. MINORS MAY MAKE MARRIAGE SETTLEMENTS.—A minor capable of contracting marriage may make a valid marriage settlement.

CHAPTER 7.—CHILDREN BY BIRTH

CHILDREN BY BIRTH.

Legitimacy.

SECTION 135. LEGITIMACY OF ISSUE OF WIFE COHABITING WITH HUSBAND.—The issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate.

Children born in wedlock.

SEC. 136. LEGITIMACY OF CHILDREN BORN IN WEDLOCK.—All children born in wedlock are presumed to be legitimate.

CROSS REFERENCES

Father legitimating child by acknowledging it, see section 164. *Post*, p. 1145.
Illegitimates, heirs to whom, see section 403. *Post*, p. 1179.
Legitimacy of children of nullified marriage, see section 43. *Ante*, p. 1129.
Legitimating children by marriage of parents, see section 139.
Mother entitled to custody of illegitimate unmarried minor, see section 144. *Post*, p. 1142.
Mother succeeds to estate of illegitimate, see section 404. *Post*, p. 1180.
Rebutting presumption of legitimacy, see section 138.

Children born after dissolution of marriage.

SEC. 137. LEGITIMACY OF CHILDREN BORN AFTER DISSOLUTION OF MARRIAGE.—All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

Who may dispute legitimacy.

SEC. 138. WHO MAY DISPUTE THE LEGITIMACY OF A CHILD.—The presumption of legitimacy can be disputed only by the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Legitimation by marriage.

SEC. 139. WHEN CHILD BECOMES LEGITIMATE.—A child born before wedlock becomes legitimate by the subequent [1] marriage of its parents.

[1] So in original.

Obligation for support, etc.

SEC. 140. OBLIGATION OF PARENTS FOR THE SUPPORT AND EDUCATION OF THEIR CHILDREN.—The parent entitled to the custody of a child must give him support and education suitable to his circumstances; provided, that if a child has earnings of his own sufficient therefor, the cost of his support and education may be taken therefrom. If the support and education which the father of a legitimate child is able to give are inadequate, the mother must assist him to the extent of her ability.

Custody of minors.

SEC. 141. CUSTODY OF MINORS.—The father and mother of a legitimate unmarried minor child are equally entitled to its custody and services. If either the father or mother be dead or unable or refuse to take the custody or has abandoned his or her family, the other is entitled to its custody and services.

CROSS REFERENCES

Action for control of child, see section 143.
Control over property of child, see section 146.
Property of child, parent as such has no control of, see section 146.
Relinquishing right to child's earnings, see section 155.

Post, p. 1143.

Custody, when parents separated.

SEC. 142. HUSBAND AND WIFE LIVING SEPARATE, NEITHER TO HAVE SUPERIOR RIGHT TO CUSTODY OF CHILDREN.—The husband and father, as such, has no rights superior to those of the wife and mother, in regard to the care, custody, education, and control of the children of the marriage, while such husband and wife live separate and apart from each other.

Action for exclusive control of children; decree.

SEC. 143. WHEN HUSBAND OR WIFE MAY BRING ACTION FOR THE EXCLUSIVE CONTROL OF CHILDREN; DECREE IN SUCH CASES.—Without application for a divorce, the husband or the wife may bring an action for the exclusive control of the children of the marriage; and the district court may, during the pendency of such action, or at the final hearing thereof, or afterwards, make such order or decree in regard to the support, care, custody, education, and control of the children of the marriage, as may be just, and in accordance with the natural rights of the parents and the best interests of the children, and may at any time thereafter amend, vary, or modify such order or decree, as the natural rights and the interests of the parties, including the children, may require.

Custody of illegitimate child.

SEC. 144. CUSTODY OF ILLEGITIMATE CHILD.—The mother of an illegitimate unmarried minor is entitled to its custody and services.

CROSS REFERENCE

Post, p. 1180.

Inheritance from illegitimate child, see section 404.

Allowance to parents.

SEC. 145. ALLOWANCE TO PARENTS.—The district court may direct an allowance to be made to the parent of a child, out of its property, for its past or future support and education, on such conditions as may be proper, whenever such direction is for its benefit.

Control child's property.

SEC. 146. PARENT CAN NOT CONTROL PROPERTY OF CHILD.—The parent, as such, has no control over the property of the child.

Remedy for parental abuse.

SEC. 147. REMEDY FOR PARENTAL ABUSE.—The abuse of parental authority is the subject of judicial cognizance in a civil action brought by the child, or by its relative within the third degree, or by the district attorney of the Canal Zone; and when the abuse is established, the child may be freed from the dominion of the parent, and the duty of support and education enforced.

CROSS REFERENCE

Parental duty, see section 140. *Ante*, p. 1142.

When parental authority ceases.

SEC. 148. WHEN PARENTAL AUTHORITY CEASES.—The authority of a parent ceases:

1. Upon the appointment, by a court, of a guardian of the person of a child;

2. Upon the marriage of the child; or,

3. Upon its attaining majority.

Remedy when parent dies without providing for child's support, etc.

SEC. 149. REMEDY WHEN PARENT DIES WITHOUT PROVIDING FOR THE SUPPORT OF HIS CHILD.—If a parent chargeable with the support of a child dies, leaving it a public charge, and leaving an estate sufficient for its support, the district attorney may claim provision for its support from the parent's estate by civil action, and for this purpose may have the same remedies as any creditors against that estate, and against the heirs and next of kin of the parent.

Reciprocal duties of maintenance.

SEC. 150. RECIPROCAL DUTIES OF PARENTS AND CHILDREN IN MAINTAINING EACH OTHER.—It is the duty of the father, the mother, and the children of any poor person who is unable to maintain himself by work, to maintain such person to the extent of their ability. The promise of an adult child to pay for necessaries previously furnished to such parent is binding.

CROSS REFERENCES

Mother supporting children, see section 140. *Ante*, p. 1142.

Wife supporting husband, see section 131. *Ante*, p. 1141.

Liability for child's necessaries.

SEC. 151. WHEN PARENT IS LIABLE FOR NECESSARIES SUPPLIED TO CHILD.—If a parent neglects to provide articles necessary for his child who is under his charge, according to his circumstances, a third person may in good faith supply such necessaries, and recover the reasonable value thereof from the parent.

CROSS REFERENCE

Infant liable on contract for necessaries, see section 22. *Ante*, p. 1126.

When parent is not liable for support furnished.

SEC. 152. WHEN PARENT IS NOT LIABLE FOR SUPPORT FURNISHED HIS CHILD.—A parent is not bound to compensate the other parent, or a relative, for the voluntary support of his child, without an agreement for compensation, nor to compensate a stranger for the support of a child who has abandoned the parent without just cause.

Liability for support of wife's children by former marriage.

SEC. 153. HUSBAND NOT BOUND FOR THE SUPPORT OF HIS WIFE'S CHILDREN BY A FORMER MARRIAGE.—A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

Compensation and support of adult child.

SEC. 154. COMPENSATION AND SUPPORT OF ADULT CHILD.—Where a child, after attaining majority, continues to serve and to be supported by the parent, neither party is entitled to compensation, in the absence of an agreement therefor.

Parent may relinquish control of child.

SEC. 155. PARENT MAY RELINQUISH SERVICES AND CUSTODY OF CHILD.—The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him. Abandonment by the parent is presumptive evidence of such relinquishment.

Wages of minors.

SEC. 156. WAGES OF MINORS.—The wages of a minor employed in service may be paid to him.

Residence of child.

SEC. 157. RIGHT OF PARENT TO DETERMINE THE RESIDENCE OF CHILD.—A parent entitled to the custody of a child has a right to change his residence, subject to the power of the proper court to restrain a removal which would prejudice the rights or welfare of the child.

CROSS REFERENCE

Ante, p. 1138. Residence, husband's right to change, see section 111.

CHILDREN BY ADOPTION.

CHAPTER 8.—CHILDREN BY ADOPTION

How adopted.
Petition.

SEC. 158. HOW CHILD MAY BE ADOPTED.—A resident of the Canal Zone, not married, or a husband and wife jointly, may petition the district court for leave to adopt a minor child; but a written consent must be given for the adoption by the child, if of the age of fourteen years, and by each of his or her living parents who is not hopelessly insane or intemperate, or has not abandoned such child, or if there are no such parents, or if the parents are unknown, or have abandoned such child, or if they are hopelessly insane or intemperate, then by the legal guardian, or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child; but when such child is an inmate of a charitable or eleemosynary institution within the Canal Zone, and has been previously abandoned by its parents or guardians thereto, then the written consent of the head of such institution must be given; provided, nevertheless, that nothing herein contained shall authorize a guardian to adopt his ward before the termination of the guardianship and the final settlement and approval of his accounts as guardian by the court. (E. O. Mar. 22, 1907, § 794; Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Executive Order No. 597½.
Vol. 37, p. 561; Vol. 42, p. 1006.

Adoption by stepfather.

SEC. 159. ADOPTION BY STEPFATHER.—A resident of the Canal Zone, being the husband of any woman who has a minor child by a deceased husband, may petition the district court for leave to adopt such minor child and for a change in the name of such child; but the written consent must be given to the adoption by the child, if of the age of fourteen years, and by the mother of such child, if she is not hopelessly insane or intemperate, or if such mother is hopelessly insane or intemperate, then by the legal guardian of such child, or if there is no such guardian, then by a discreet and suitable person appointed by the court to act in the proceedings as the next friend of such child. (E. O. Mar. 22, 1907, § 795; Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Executive Order No. 597½.
Vol. 37, p. 561; Vol. 42, p. 1006.

Order of the court.

SEC. 161. ORDER OF THE COURT.—When the foregoing provisions are complied with, if the court is satisfied with the ability of the petitioner to bring up and educate the child properly, having reference to the degree and condition of the child's parents and the fitness and propriety of such adoption, it shall make an order setting forth the facts and declaring that from that date said child, to all legal intents and purposes, is the child of the petitioner and that its name is thereby changed. The order shall be recorded in the records of the court. (E. O. Mar. 22, 1907, § 796; Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Effect.

SEC. 162. EFFECT OF THE ORDER.—The natural parents, except when such child is adopted under the provisions of section 159, shall, by such order, be divested of all legal rights and obligations in respect to the child, and the child shall be free from all legal obliga-

tions of obedience and maintenance with respect to them. Such child shall be to all intents and purposes the child and legal heir of the person adopting him or her, entitled to all the rights and privileges, and subject to all the obligations of a child of such person begotten in lawful wedlock. (E. O. Mar. 22, 1907, § 797; Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Executive Order No. 597½.
Vol. 37, p. 561; Vol. 42, p. 1006.

SEC. 163. CONSENT TO ADOPTION OF ILLEGITIMATE CHILD.—If the child to be adopted is illegitimate, the consent of the father to adoption shall not be required. (E. O. Mar. 22, 1907, § 798; Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Illegitimate child.

SEC. 164. ADOPTION OF ILLEGITIMATE CHILD BY FATHER.—The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth. The foregoing provisions of this chapter do not apply to such an adoption.

Adoption by father.

CROSS REFERENCE

Affecting inheritance, see section 403. *Post*, p. 1179.

CHAPTER 9.—GUARDIAN AND WARD

GUARDIAN AND WARD.

CROSS REFERENCE

Judicial appointment of guardians, see Code Civil Procedure. *Ante*, p. 1078.

SEC. 165. GUARDIAN, WHAT.—A guardian is a person appointed to take care of the person or property of another.

"Guardian," defined.

SEC. 166. WARD, WHAT.—The person over whom or over whose property a guardian is appointed, is called his ward.

"Ward," defined.

SEC. 166a. KINDS OF GUARDIANS.—Guardians are either:

Kinds of.

1. General; or,
2. Special.

CROSS REFERENCES

Testamentary guardians, see section 166e.
Guardians ad litem, see Code Civil Procedure. *Ante*, p. 1081.

SEC. 166b. GENERAL GUARDIAN, WHAT.—A general guardian is a guardian of the person or of all the property of the ward within the Canal Zone, or of both.

General guardian.

SEC. 166c. SPECIAL GUARDIAN, WHAT.—Every other is a special guardian.

Special guardian.

SEC. 166d. GUARDIAN; APPOINTMENT BY WILL, AND SO FORTH.—A guardian of the person or estate, or of both, of a child born, or likely to be born, may be appointed by will or by deed, to take effect upon the death of the parent appointing:

Appointment, by will, etc.

One. If the child be legitimate, by the father, with the written consent of the mother; or by either parent, if the other be dead or incapable of consent.

Two. If the child be illegitimate, by the mother.

SEC. 166e. APPOINTMENT BY WILL OR DEED OF GUARDIAN.—A guardian of the person or estate, or of both, of an insane or incompetent person may be appointed by will or deed, to take effect upon the death of the person appointing;

Guardian of an insane, etc., person. Appointment by will.

1. If the insane or incompetent person be unmarried, or be a person whose marriage has been annulled or dissolved by death or divorce, by the father, with the written consent of the mother, or by either parent if the other be dead or incapable of consent.

2. If the insane or incompetent person be married and a person whose marriage has not been annulled or dissolved by divorce, then by the spouse.

Rules for awarding custody of minor.

SEC. 166f. RULES FOR AWARDING CUSTODY OF MINOR.—In awarding the custody of a minor, or in appointing a general guardian, the court or officer is to be guided by the following considerations:

1. By what appears to be for the best interest of the child in respect to its temporal and its mental and moral welfare; and if the child is of a sufficient age to form an intelligent preference, the court may consider that preference in determining the question;

2. As between parents adversely claiming the custody or guardianship, neither parent is entitled to it as of right; but other things being equal, if the child is of tender years, it should be given to the mother; if it is of an age to require education and preparation for labor and business, then to the father;

3. Of two persons equally entitled to the custody in other respects, preference is to be given as follows:

(1) To a parent;

(2) To one who was indicated by the wishes of a deceased parent;

(3) To one who already stands in the position of a trustee of a fund to be applied to the child's support;

(4) To a relative.

4. Any parent who knowingly or willfully abandons, or having the ability so to do, fails to maintain his minor child under the age of fourteen years, forfeits the guardianship of such child.

CROSS REFERENCE

Ante, p. 1142. Respective rights of parents, see section 141.

Relation confidential.

SEC. 167. RELATION CONFIDENTIAL.—The relation of guardian and ward is confidential, and is subject to the provisions of chapters 49 and 50 of this code on trusts.

Post, pp. 1258, 1261.

Guardian under court's direction.

SEC. 168. GUARDIAN UNDER DIRECTION OF COURT.—In the management and disposition of the person or property committed to him, a guardian may be regulated and controlled by the court.

Death of joint guardian.

SEC. 169. DEATH OF A JOINT GUARDIAN.—On the death of one of two or more joint guardians, the power continues to the survivor until a further appointment is made by the court.

CROSS REFERENCE

Post, p. 1264. Survival of trust, see section 1033.

Removal of guardian.

SEC. 169a. REMOVAL OF GUARDIAN.—A guardian may be removed by the district court for any of the following causes:

1. For abuse of his trust;

2. For continued failure to perform his duties;

3. For incapacity to perform his duties;

4. For gross immorality;

5. For having an interest adverse to the faithful performance of his duties;

6. For removal from the Canal Zone;

7. In the case of a guardian of the property, for insolvency; or,

8. When it is no longer proper that the ward should be under guardianship.

How guardian appointed by parent is superseded.

SEC. 169b. GUARDIAN APPOINTED BY PARENT, HOW SUPERSEDED.—The power of a guardian appointed by a parent is superseded:

1. By his removal, as provided by section 169a;

2. By the solemnized marriage of the ward; or

3. By the ward's attaining majority.

Suspension of power of guardian.

SEC. 169c. SUSPENSION OF POWER OF GUARDIAN.—The power of a guardian appointed by a court, is suspended only:

One. By order of the court; or

Two. If the appointment was made solely because of the ward's minority, by his attaining majority; or

Three. The guardianship over the person of the ward, by the marriage of the ward.

Release by ward.

SEC. 169d. RELEASE BY WARD.—After a ward has come to his majority, he may settle accounts with his guardian, and give him a release, which is valid if obtained fairly and without undue influence.

Guardian's discharge.

SEC. 169e. GUARDIAN'S DISCHARGE.—A guardian appointed by a court is not entitled to his discharge until one year after the ward's majority.

FOREIGN CORPORATIONS GENERALLY.

CHAPTER 10.—FOREIGN CORPORATIONS GENERALLY

CROSS REFERENCES

In respect to corporations engaged in the sale of securities, see sections 180 et seq. *Post*, p. 1149.

Fraudulent insolvencies by corporations and other frauds in their management, see sections 396 to 409 of the Criminal Code.

Application for business license.

Accompanying papers; process agent; fee.

SECTION 170. APPLICATION FOR LICENSE TO DO BUSINESS; ACCOMPANYING PAPERS; PROCESS AGENT; FILING FEE.—No corporation organized under the laws of any State or Territory of the United States or of any foreign country shall do business in the Canal Zone or maintain an office therein until it shall have filed with the executive secretary of the Panama Canal:

(a) An application for a license setting forth the name of the corporation, the names of its officers and directors, and a statement showing the general nature of the business in which it desires to engage in the Canal Zone;

(b) A certified copy of its articles of incorporation, or of its charter, or of the statute or statutes or legislative or executive or governmental acts creating it, in cases where it has been created by charter or statute or legislative or executive or governmental act, duly certified by the Secretary of State or other officer authorized by law to certify such copy;

(c) An affidavit sworn to by any authorized officer of such corporation which shall state the amount of its authorized capital stock at or within sixty days prior to such filing;

(d) Every corporation must, at the time of filing its application, file in the office of the Executive Secretary a designation of some person residing within the Canal Zone and the place of business or residence of such person upon whom process issued by authority of or under any law of the Canal Zone may be served. With such designation shall be submitted a certified copy of the minutes of the board of directors of such corporation authorizing such designation. Process may be served on the person so designated, or, in the event that such person can not be found at the place designated or in the event that no such person is designated, then on the Executive Secretary of the Panama Canal, or his successor in office, and such service shall be a valid service on such corporation. When the Executive Secretary shall have been served with process as provided herein he shall without delay communicate the same to the corporation concerned at its last known address and no default judgment shall be entered against such corporation in any action in which process is served on the Executive Secretary until at least 60 days after the date of such service;

(e) Corporations licensed under the provisions of this chapter shall also be required to file with the Executive Secretary any amendment of or change in any of the provisions of its original articles of incorporation;

(f) With the application for license there shall also be submitted the sum of $10, which amount shall cover the filing fee and the annual license fee for the remainder of the calendar year during which the license is issued.

Insurance companies to file additional documents and deposits.

SEC. 171. INSURANCE COMPANIES TO FILE ADDITIONAL DOCUMENTS AND DEPOSITS.—In addition to the requirements hereinbefore prescribed, insurance companies organized under the laws of any State or Territory of the United States or of any foreign country shall be required to file the following documents:

(a) A certificate of the Commissioner of Insurance or other duly authorized official, showing that the company is authorized to transact business in the State or country under whose laws the company is organized;

(b) A duly certified copy of the last annual statement of the insurance company to the Commissioner of Insurance or other duly authorized official in the State or country where the company is organized;

(c) A deposit with the executive secretary or his successor in office of $10,000 in cash or current marketable securities, which shall be held in trust by the executive secretary for the account of the company, to satisfy any judgment that may be rendered against the company under any insurance policies that it may issue.

Insurance companies to file statement and to pay license tax.

SEC. 172. INSURANCE COMPANIES TO FILE STATEMENT AND PAY LICENSE TAX.—Insurance companies licensed under this chapter shall file with the executive secretary between January 1 and March 1 of each year a verified statement showing the business transacted within the Canal Zone by the company during the previous calendar year and a duly certified copy of its annual report to the insurance commissioner of the State, Territory, or country in which the company is organized. Such insurance companies shall pay before March 1 of each year, in lieu of all other taxes save the annual fee provided for in section 174, a license tax equal to 1½ per centum of its net premium receipts in the Canal Zone for the calendar year preceding.

Issuance of license.

SEC. 173. ISSUANCE OF LICENSE.—Upon compliance with the foregoing conditions, the Governor of the Panama Canal, if he is satisfied that the business desired to be transacted is proper, legitimate, permissible under the laws of the Canal Zone, and not in conflict with the policy of administering the Canal Zone as an adjunct of the Panama Canal, may issue a license to do business in the Canal Zone.

Annual license fee.

SEC. 174. ANNUAL LICENSE FEE.—The right to continue to do business after the period for which the license is issued shall be contingent upon the payment of a license fee of $10, payable in advance, on January 1 of each year.

Punishment for transacting business without license.

SEC. 175. TRANSACTING BUSINESS WITHOUT LICENSE, HOW PUNISHED; CONTRACTS VOID.—Any corporation which does business in the Canal Zone without having complied with the provisions of this chapter shall be subject to a fine of not more than $500, and any agent or person acting for such corporation, unless it shall have complied with the provisions of this chapter, shall, upon conviction, be punished as for a misdemeanor. In addition to this penalty, every contract made by or on behalf of any such foreign corporation affecting the liability thereof or relating to property within the Canal Zone shall be held void on its behalf and on behalf of its assigns, but shall be enforceable against it or them.

Contracts void.

Loss of benefits.

SEC. 176. SAME; LOSS OF BENEFIT OF LIMITATION LAWS.—Corporations doing business in the Canal Zone which fail to comply with

the provisions of this chapter shall not be entitled to the benefit of the laws of the Canal Zone limiting the time for the commencement of civil actions.

License under chapter 11 sufficient.

SEC. 177. LICENSE UNDER CHAPTER 11 SUFFICIENT.—No corporation licensed under the provisions of chapter 11 of this code shall be required to comply with the provisions of this chapter.

"Corporation" to include joint stock company.

SEC. 178. "CORPORATION" INCLUDES JOINT STOCK COMPANIES.—The term "corporation" as used in this chapter shall include joint stock companies.

Revocation of license.

SEC. 179. REVOCATION OF LICENSE.—The Governor of The Panama Canal is authorized to revoke any license issued hereunder if, upon examination, he shall be satisfied that the operations of the corporation are conducted in an illegal manner, or in a manner contrary to public policy or to the policy of administering the Canal Zone as an adjunct of the Panama Canal.

CHAPTER 11.—SECURITIES SALES LAW

SECURITY SALES LAW.

CROSS REFERENCES

Foreign corporations generally, see section 170 et seq. *Ante*, p. 1147.

Fraudulent insolvencies by corporations and other frauds in their management, see sections 396 to 409 of the Criminal Code.

Permits to sell securities.

SEC. 180. PERMIT TO SELL SECURITIES.—No company shall sell, or offer for sale, negotiate for the sale of, or take subscriptions for any security of its own issue until it shall have first applied for and secured from the Governor of the Panama Canal a permit authorizing it to do so. Such application shall be in writing and shall be verified. In such application the applicant shall set forth the names and addresses of its officers, the location of its principal office, the name of its Canal Zone representative, an itemized account of its financial condition, the amount and character of its assets and liabilities, a detailed statement of the plan upon which it proposes to transact business, a copy of any prospectus or advertisement, or other description of such securities, then prepared by or for it for distribution or publication, and such additional information concerning the company, its condition and affairs, as the governor may require. If the applicant is a partnership or an unincorporated association or joint stock company, it shall file with its application a copy of its articles of partnership or association, and all other papers pertaining to its organization. If the applicant is a corporation, it shall file with its application a copy of all minutes of any proceedings of its directors or stockholders or members relating to or affecting the issue of such securities, a copy of its articles of incorporation and of its by-laws and of any amendments thereto, and also a certificate, executed by the proper officer of the State, Territory, or country in which such corporation is organized, dated not more than sixty days before the filing of the application, showing that the applicant is authorized to transact business in such State, Territory, or country.

Designation of process agent.

SEC. 181. DESIGNATION OF PROCESS AGENT.—Every company, at the time of filing its application, shall file in the office of the executive secretary a designation of some person residing within the Canal Zone and stating the place of business or residence of such person upon whom process issued by authority of or under any law of the Canal Zone may be served. With such designation shall be submitted a certified copy of the minutes of the board of directors of such company authorizing such designation. Process may be served on the person so designated, or, in the event that such person can not be found at the place designated or in the event that no person is

designated, then on the executive secretary of the Panama Canal, or his successor in office, and such service shall be a valid service on such corporation. When the executive secretary shall have been served with process as provided herein he shall without delay communicate the same to the company concerned at its last known address and no default judgment shall be entered against such corporation in any action in which process is served on the executive secretary until at least sixty days after the date of such service.

Examination of application; issuance and revocation of permit.

SEC. 181a. EXAMINATION OF APPLICATION; ISSUANCE AND REVOCATION OF PERMIT.—Upon the filing of such application, it shall be the duty of the governor to examine it, and the other papers and documents filed therewith, or cause the same to be examined, and he may, if he deems it advisable, make or have made a detailed examination, audit, and investigation of the applicant and its affairs. If he finds that the proposed plan of business of the applicant is not unfair, unjust, inequitable, or contrary to the policy of administering the Canal Zone as an adjunct of the Panama Canal, that it intends to transact its business fairly and honestly, and that the securities that it proposes to issue and the methods to be used by it in issuing or disposing of them are not such as, in his opinion, will work a fraud upon the purchaser thereof, the Governor may issue to the applicant a permit authorizing it to issue and dispose of securities, as therein provided, in the Canal Zone. Each such permit shall expire on the thirty-first day of December next following its issuance, unless sooner revoked. Otherwise, he shall deny the application and refuse such permit and notify the applicant in writing of his decision. Every permit shall recite that the issuance thereof is permissive only and does not constitute a recommendation or indorsement of the securities permitted to be sold. The governor may impose such conditions as he may deem necessary to the issue of such securities, and shall have the power to establish such rules and regulations as may be reasonable or necessary to insure the disposition of the proceeds of such securities in the manner and for the purposes provided in such permit, and may, from time to time for cause, amend, alter, or revoke any permit issued by him, or temporarily suspend the rights of the applicant under such permit.

Certificate of agent or broker.

SEC. 181b. CERTIFICATE OF AGENT OR BROKER.—No person or company shall act as an agent or broker, other than for a company holding a permit under the preceding section, until such person or company shall have first applied for and secured from the Governor a certificate, then in effect, authorizing such person or company so to do. Each such certificate shall expire on the thirty-first day of December next after its issuance, unless sooner revoked. To secure such certificate, the applicant shall make and file in the office of the Governor an application therefor in writing, verified by or in behalf of the applicant. In such application the applicant shall set forth,

Additional information required.

in addition to such other information as may be required by the Governor:

1. The name and address of the applicant, and, if it be a corporation, association, or joint-stock company, the name and address of each of its managing officers and agents, and, if it be a partnership, the name and address of each of the partners;

2. A succinct statement of facts showing that the applicant, and its managing officers and agents, if it be a corporation, or members, if it be a partnership, have a good business reputation;

3. If the applicant is a broker, the general plan and character of the business of the applicant.

If the applicant is a corporation or association it shall file with its application a designation of a process agent, as provided in section 181.

Examination of application; issuance and revocation of permit.

SEC. 181c. EXAMINATION OF APPLICATION; ISSUANCE AND REVOCATION OF PERMIT.—The Governor shall examine such application, or cause the same to be examined, and shall make such further investigation of the applicant and its affairs as he shall deem advisable. If, from such examination, the Governor shall be satisfied that the business reputation of the applicant and of its officers or members, if any, is good, and that the conduct of such business will not conflict with the policy of administering the Canal Zone as an adjunct of the Panama Canal, he may issue such certificate. Otherwise he shall refuse the same and deny the application and notify the applicant of his decision. The Governor may at any time revoke any broker's or agent's certificate issued by him if he shall find that the holder thereof is of bad business repute, or had violated any provision of this chapter, or has engaged in, or is about to engage in, any fraudulent transaction, or if he shall find that the conduct of such business conflicts with good policy in the administration of the Canal Zone.

Report on sale of securities.

SEC. 181d. REPORT ON SALE OF SECURITIES.—Every company or broker authorized under this chapter to sell securities shall thereafter, at such times as they may be required by the Executive Secretary, make and file in the office of the Executive Secretary, a report, setting forth, in such form as the Executive Secretary may prescribe, the securities sold by it under the authority of any permit issued by him, the proceeds derived therefrom, the disposition of such proceeds, and such other information concerning its property, officers, or affairs, relating to or affecting the value of such securities, as the Executive Secretary may require.

Fees.

SEC. 181e. FEES.—Each company or broker shall, with its application for a permit or certificate, remit the sum of $10, which amount shall cover the filing fee and the annual license fee for the remainder of the calendar year during which the permit or certificate is issued, but no part of such fee shall be returned if the application is disapproved. The annual fee for renewal of a permit or certificate issued hereunder shall be $10, payable in advance on or before January first of each year.

Penalty for violation.

SEC. 181f. PENALTY FOR VIOLATION.—Any company, agent, or broker, which shall directly or indirectly issue or cause to be issued, or solicit the sale of any security contrary to the provisions of this chapter, shall be subject to a fine of not more than $500. In addition to this penalty, every contract made by or on behalf of any such company, agent, or broker affecting the liability thereof shall be void on its behalf and on behalf of its assigns, but shall be enforceable against it or them.

Definitions.

SEC. 181g. DEFINITIONS.—The following words have in this chapter the signification attached to them in this section, unless otherwise apparent from the context:

"Company."

1. The word "company" includes all corporations, associations, joint-stock companies, and partnerships;

"Security."

2. The word "security" includes all stocks, bonds, or other evidences of property or interest in any company;

"Agent."

3. The word "agent" as used in this chapter means and includes every person or company employed or appointed by a company or broker who shall, within the Canal Zone, either as an employee or otherwise, for a compensation, sell, offer for sale, negotiate for the sale of, or take a subscription for the sale of any security;

"Broker."

4. The word "broker" as used in this chapter includes every person or company, other than an agent, who shall for a commission, in the Canal Zone, engage either wholly or in part in the business of selling, offering for sale, negotiating for the sale of, or otherwise dealing in any security or securities issued by others, or of underwriting any issue of securities, or of purchasing such securities for the purpose of reselling them or of offering them for sale to the public.

NATURE OF PROPERTY.

CHAPTER 12.—NATURE OF PROPERTY

Property defined.

SEC. 182. PROPERTY, WHAT.—The ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others. In this code, the thing of which there may be ownership is called property.

CROSS REFERENCES

Post, p. 1158.

Personal property, see sections 189 and 238 et seq.
Real property, see section 186.

In what property may exist.

SEC. 183. IN WHAT PROPERTY MAY EXIST.—There may be ownership of all inanimate things which are capable of appropriation or of manual delivery; of all domestic animals; of all obligations; of such products of labor or skill as the composition of an author, the goodwill of a business, trade-marks and signs, and of rights created or granted by statute.

CROSS REFERENCE

Post, p. 1158.

Products of the mind, see sections 240 et seq.

Wild animals.

SEC. 184. WILD ANIMALS.—Animals wild by nature are the subjects of ownership, while living, only when on the land of the person claiming them, or when tamed, or taken and held in possession, or disabled and immediately pursued.

Real and personal property.

SEC. 185. REAL AND PERSONAL.—Property is either:

1. Real or immovable; or,
2. Personal or movable.

Real property.

SEC. 186. REAL PROPERTY.—Real or immovable property consists of:

1. Land;
2. That which is affixed to land;
3. That which is incidental or appurtenant to land;
4. That which is immovable by law.

CROSS REFERENCES

Land defined, see section 187.
Post, p. 1218. Fixtures, see section 660.

Land defined.

SEC. 187. LAND.—Land is the solid material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance.

Fixtures.

SEC. 188. FIXTURES.—A thing is deemed to be affixed to land when it is attached to it by roots, as in the case of trees, vines, or shrubs; or imbedded in it, as in the case of walls; or permanently resting upon it, as in the case of buildings; or permanently attached to what is thus permanent, as by means of cement, plaster, nails, bolts, or screws.

CROSS REFERENCE

Post, p. 1159.

Ownership of fixtures, see section 248.

Personal property.

SEC. 189. PERSONAL PROPERTY.—Every kind of property that is not real is personal.

CROSS REFERENCES

Accession to personal property, see sections 250 to 258.	*Post*, p. 1160.
Choses in action, see sections 238 and 239.	*Post*, p. 1158.
Confusion of goods, see sections 250 to 258.	*Post*, p. 1160.
Law governing, see section 237.	*Post*, p. 1158.
Modes of acquisition of, see section 247.	*Post*, p. 1159.
Products of mind, see sections 240 to 245.	*Post*, p. 1158.

CHAPTER 13.—OWNERS OF PROPERTY

OWNERS OF PROPERTY.

Owner.

SEC. 190. OWNER.—All property has an owner, whether that owner is the government, and the property public, or the owner an individual, and the property private.

Who may own.

SEC. 191. WHO MAY OWN PROPERTY.—Any person, whether citizen or alien, may take, hold, and dispose of property within the Canal Zone.

CROSS REFERENCE

Aliens, right to inherit property, see section 420. *Post*, p. 1181.

Aliens inheriting.

SEC. 192. ALIENS INHERITING MUST CLAIM WITHIN FIVE YEARS.—If a nonresident alien takes by succession, he must appear and claim the property within five years from the time of succession, or be barred. The property in such case is disposed of as provided in sections 648 et seq., of the Code of Civil Procedure.

CROSS REFERENCE

When and how aliens may inherit, see section 420. *Post*, p. 1181.

CHAPTER 14.—MODIFICATIONS OF OWNERSHIP

MODIFICATIONS OF OWNERSHIP.

INTERESTS IN PROPERTY

Ownership.

SECTION 193. OWNERSHIP, ABSOLUTE OR QUALIFIED.—The ownership of property is either:

1. Absolute; or,
2. Qualified.

When absolute.

SEC. 194. WHEN ABSOLUTE.—The ownership of property is absolute when a single person has the absolute dominion over it, and may use it or dispose of it according to his pleasure, subject only to general laws.

CROSS REFERENCES

Ownership in what property may exist, see sections 183 and 184.	*Ante*, p. 1152.
Ownership, termination of, see sections 231 et seq.	*Post*, p. 1157.
Perpetual interest defined, see section 206.	*Post*, p. 1154.

When qualified.

SEC. 195. WHEN QUALIFIED.—The ownership of property is qualified:

1. When it is shared with one or more persons;
2. When the time of enjoyment is deferred or limited;
3. When the use is restricted.

Sole ownership.

SEC. 196. SEVERAL OWNERSHIP, WHAT.—The ownership of property by a single person is designated as a sole or several ownership.

Ownership by several persons.

SEC. 197. OWNERSHIP OF SEVERAL PERSONS.—The ownership of property by several persons is either:

1. Of joint interests;
2. Of partnership interests;
3. Of interests in common;
4. Of community interest of husband and wife.

CROSS REFERENCES

Community property, see section 202.
Interest in common, see sections 200 and 201.
Ante, p. 1153. Joint interest, see section 193.
Partnership interests, see section 199.

Joint interest.

SEC. 198. JOINT INTEREST, WHAT.—A joint interest is one owned by several persons in equal shares, by a title created by a single will or transfer, when expressly declared in the will or transfer to be a joint tenancy, or when granted or devised to executors or trustees as joint tenants.

Partnership interest.

SEC. 199. PARTNERSHIP INTEREST, WHAT.—A partnership interest is one owned by several persons, in partnership, for partnership purposes.

Interest in common.

SEC. 200. INTEREST IN COMMON, WHAT.—An interest in common is one owned by several persons, not in joint ownership or partnership.

CROSS REFERENCES

See, also, sections 198 and 201.
Ante, p. 1139. Husband and wife as owners in common, see section 116.
Post, p. 1175. Legacy to two or more makes them owners in common, see section 381.

Interests in common.

SEC. 201. WHAT INTERESTS ARE IN COMMON.—Every interest created in favor of several persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint interest, as provided in section 198, or unless acquired as community property.

CROSS REFERENCE

Interests in common, see sections 198 and 200.

Community property.

SEC. 202. COMMUNITY PROPERTY.—Community property is property acquired by husband and wife, or either, during marriage, when not acquired as the separate property of either or as joint interests or interests in common.

CROSS REFERENCE

Ante, p. 1139. See also section 119.

Interests as to time.

SEC. 203. INTERESTS AS TO TIME.—In respect to the time of enjoyment, an interest in property is either:

1. Present or future; and,
2. Perpetual or limited.

Present interest.

SEC. 204. PRESENT INTEREST, WHAT.—A present interest entitles the owner to the immediate possession of the property.

Future interest.

SEC. 205. FUTURE INTEREST, WHAT.—A future interest entitles the owner to the possession of the property only at a future period.

CROSS REFERENCES

Post, pp. 1156, 1157. Accumulations as future interests, see sections 224 et seq., and 230.
Post, p. 1155. Conditions upon enjoyment of estates, see sections 217 et seq.
Post, p. 1157. Terminating future interests, see sections 231 et seq.

Perpetual interest.

SEC. 206. PERPETUAL INTEREST, WHAT.—A perpetual interest has a duration equal to that of the property.

Limited interest.

SEC. 207. LIMITED INTEREST, WHAT.—A limited interest has a duration less than that of the property.

Kinds of future interests.

SEC. 208. KINDS OF FUTURE INTERESTS.—A future interest is either:

1. Vested; or,
2. Contingent.

Vested.

SEC. 209. VESTED INTERESTS.—A future interest is vested when there is a person in being who would have a right, defeasible or indefeasible, to the immediate possession of the property, upon the ceasing of the intermediate or precedent interest.

Contingent.

SEC. 210. CONTINGENT INTERESTS.—A future interest is contingent, whilst the person in whom, or the event upon which, it is limited to take effect remains uncertain.

Alternative.

SEC. 211. TWO OR MORE FUTURE INTERESTS.—Two or more future interests may be created to take effect in the alternative, so that if the first in order fails to vest, the next in succession shall be substituted for it, and take effect accordingly.

Certain future interests not to be void.

SEC. 212. CERTAIN FUTURE INTERESTS NOT TO BE VOID.—A future interest is not void merely because of the improbability of the contingency on which it is limited to take effect.

Posthumous children.

SEC. 213 POSTHUMOUS CHILDREN.—When a future interest is limited to successors, heirs, issue, or children, posthumous children are entitled to take in the same manner as if living at the death of their parent.

CROSS REFERENCES

Future interests defeated by birth of posthumous child, see section 231. *Post*, p. 1157.
Succession by posthumous children, see sections 344, 370, 419. *Post*, pp. 1171, 1174, 1181.

Qualities of expectant estates.

SEC. 214. QUALITIES OF EXPECTANT ESTATES.—Future interests pass by succession, will, and transfer, in the same manner as present interests.

Mere possibility not deemed an interest.

SEC. 215. SAME.—A mere possibility, such as the expectancy of an heir apparent, is not to be deemed an interest of any kind.

CROSS REFERENCE

Mere possibility cannot be transferred, see section 262. *Post*, p. 1161.

What future interests recognized.

SEC. 216. WHAT FUTURE INTERESTS ARE RECOGNIZED.—No future interest in property is recognized by the law, except such as is defined in this code.

Conditions of ownership.

CONDITIONS OF OWNERSHIP

Fixing time of enjoyment.

SEC. 217. FIXING THE TIME OF ENJOYMENT.—The time when the enjoyment of property is to begin or end may be determined by computation, or be made to depend on events. In the latter case, the enjoyment is said to be upon condition.

CROSS REFERENCE

Conditional Legacies, see section 376. *Post*, p. 1175.

Conditions.

SEC. 218. CONDITIONS.—Conditions are precedent or subsequent. The former fix the beginning, the latter the ending, of the right.

CROSS REFERENCES

Conditional obligations, see sections 430 to 438. *Post*, p. 1183.
Conditions concurrent, see section 433. *Post*, p. 1183.
Conditions precedent, what are, see sections 377 and 432. *Post*, pp. 1175, 1183.
Conditions subsequent, what are, see sections 380 and 434. *Post*, pp. 1175, 1183.

Conditions precedent, when void.

SEC. 219. CERTAIN CONDITIONS PRECEDENT VOID.—If a condition precedent requires the performance of an act wrong of itself, the instrument containing it is so far void, and the right can not exist. If it requires the performance of an act not wrong of itself, but otherwise unlawful, the instrument takes effect and the condition is void.

CROSS REFERENCES

Post, p. 1183. Conditions precedent, see section 432.
Post, p. 1184. Unlawful conditions void, see section 437.

Restraining marriage, void.

SEC. 220. CONDITIONS RESTRAINING MARRIAGE VOID.—Conditions imposing restraints upon marriage, except upon the marriage of a minor, are void; but this does not affect limitations where the intent was not to forbid marriage, but only to give the use until marriage.

CROSS REFERENCE

Post, p. 1201. Contracts in restraint of marriage, see section 578.

Restraining alienation, void.

SEC. 221. CONDITIONS RESTRAINING ALIENATION VOID.—Conditions restraining alienation, when repugnant to the interest created, are void.

CROSS REFERENCE

Restraints upon alienation, see section 222.

RESTRAINTS UPON ALIENATION

Restraints upon alienation.

SEC. 222. RESTRAINTS UPON ALIENATION.—The absolute power of alienation can not be suspended, by any limitation or condition whatever, for a longer period than as follows:

1. During the continuance of the lives of persons in being at the creation of the limitation or condition; or

2. For a period not to exceed twenty-five years from the time of the creation of the suspension.

Future interests void, which suspend power of alienation.

SEC. 223. FUTURE INTERESTS VOID, WHICH SUSPEND POWER OF ALIENATION.—Every future interest is void in its creation which, by any possibility, may suspend the absolute power of alienation for a longer period than is prescribed in this chapter. Such power of alienation is suspended when there are no persons in being by whom an absolute interest in possession can be conveyed.

Accumulations.

ACCUMULATIONS

Disposition of income.

SEC. 224. DISPOSITIONS OF INCOME.—Dispositions of the income of property to accrue and to be received at any time subsequent to the execution of the instrument creating such disposition, are governed by the rules prescribed in this chapter in relation to future interests.

When void.

SEC. 225. ACCUMULATIONS, WHEN VOID.—All directions for the accumulation of the income of property, except such as are allowed by this chapter, are void.

Accumulations of income.

SEC. 226. ACCUMULATION OF INCOME.—An accumulation of the income of property, for the benefit of one or more persons, may be directed by any will or transfer in writing sufficient to pass the property out of which the fund is to arise, as follows:

1. If such accumulation is directed to commence on the creation of the interest out of which the income is to arise, it must be made for the benefit of one or more minors then in being, and terminate at the expiration of their minority; or,

2. If such accumulation is directed to commence at any time subsequent to the creation of the interest out of which the income is to arise, it must commence within the time in this chapter permitted for the vesting of future interests, and during the minority of the beneficiaries, and terminate at the expiration of such minority.

CROSS REFERENCES

Post, pp. 1176, 1177. Annuities and bequest of income, see sections 383[1] (3) and 391.
Post, p. 1157. Ownership of undisposed accumulations, see section 230.

[1] So in original.

When direction void in part.
Ante, p. 1156.

SEC. 227. OTHER DIRECTIONS, WHEN VOID IN PART.—If in either of the cases mentioned in section 226 the direction for an accumulation is for a longer term than during the minority of the beneficiaries, the direction only, whether separable or not from other provisions of the instrument, is void as respects the time beyond such minority.

Application of income to support, etc., of minor.

SEC. 228. APPLICATION OF INCOME TO SUPPORT, ET CETERA, OF MINOR.—When a minor for whose benefit an accumulation has been directed is destitute of other sufficient means of support and education, the proper court, upon application, may direct a suitable sum to be applied thereto out of the fund.

CHAPTER 15.—RIGHTS OF OWNERS

RIGHTS OF OWNERS.

Increase of property.

SECTION 229. INCREASE OF PROPERTY.—The owner of a thing owns also all its products and accessions.

CROSS REFERENCES

Accessions to personal property, see sections 250 et seq. *Post*, p. 1160.
Fixtures, see section 248. *Post*, p. 1159.

Who entitled to income of property in certain cases.

SEC. 230. IN CERTAIN CASES, WHO ENTITLED TO INCOME OF PROPERTY.—When, in consequence of a valid limitation of a future interest, there is a suspension of the power of alienation or of the ownership during the continuation of which the income is undisposed of, and no valid direction for its accumulation is given, such income belongs to the persons presumptively entitled to the next eventual interest.

CHAPTER 16.—TERMINATION OF OWNERSHIP

TERMINATION OF OWNERSHIP.

Future interests, when defeated.

SEC. 231. FUTURE INTERESTS, WHEN DEFEATED.—A future interest, depending on the contingency of the death of any person without successors, heirs, issue, or children, is defeated by the birth of a posthumous child of such person, capable of taking by succession.

CROSS REFERENCE

Posthumous children, see section 213. *Ante*, p. 1155.

SEC. 232. SAME.—A future interest may be defeated in any manner or by any act or means which the party creating such interest provided for or authorized in the creation thereof; nor is a future interest, thus liable to be defeated, to be on that ground adjudged void in its creation.

When not defeated.

SEC. 233. FUTURE INTERESTS, WHEN NOT DEFEATED.—No future interest can be defeated or barred by any alienation or other act of the owner of the intermediate or precedent interest, nor by any destruction of such precedent interest by forfeiture, surrender, merger, or otherwise, except as provided by section 234, or where a forfeiture is imposed by statute as a penalty for the violation thereof.

SEC. 234. SAME.—No future interest, valid in its creation, is defeated by the determination of the precedent interest before the happening of the contingency on which the future interest is limited to take effect; but should such contingency afterwards happen, the future interest takes effect in the same manner and to the same extent as if the precedent interest had continued to the same period.

GENERAL DEFINITIONS AFFECTING PROPERTY.

CHAPTER 17.—GENERAL DEFINITIONS AFFECTING PROPERTY

Income.

Ante, pp. 1152-1157.

SECTION 235. INCOME, WHAT.—The income of property, as the term is used in chapters 12 to 16 of this code, includes the rents and profits of real property, the interest on money, dividends upon stock, and other produce of personal property.

Time of creation.

SEC. 236. TIME OF CREATION, WHAT.—The delivery of the grant, where a limitation, condition, or future interest is created by grant, and the death of the testator, where it is created by will, is to be deemed the time of the creation of the limitation, condition, or interest within the meaning of chapters 12 to 16 of this code.

Ante, pp. 1152-1157.

PERSONAL PROPERTY AND PARTICULAR KINDS THEREOF.

CHAPTER 18.—PERSONAL PROPERTY AND PARTICULAR KINDS THEREOF

In general.

PERSONAL PROPERTY IN GENERAL

By what law governed.

SECTION 237. BY WHAT LAW GOVERNED.—If there is no law to the contrary, in the place where personal property is situated, it is deemed to follow the person of its owner, and is governed by the law of his domicile.

Things in action.

THINGS IN ACTION

Defined.

SEC. 238. THINGS IN ACTION DEFINED.—A thing in action is a right to recover money or other personal property by a judicial proceeding.

Transfer and survivorship.

SEC. 239. TRANSFER AND SURVIVORSHIP.—A thing in action arising out of the violation of a right of property, or out of an obligation, may be transferred by the owner. Upon the death of the owner it passes to his personal representatives, except where, in the cases provided in the Code of Civil Procedure, it passes to his devisees or successor in office.

CROSS REFERENCES

Post, p. 1301. Assignment of debt secured by mortgage carries security, see section 1348.

Post, p. 1184. Burden of obligation not transferable, see section 443.

Post, p. 1289. Insurance policy transfer of, see section 1247.

Post, p. 1159. Literary property is assignable, see section 242.

Post, p. 1185. Nonnegotiable written contract for payment of money or property transferable by indorsement, see section 445.

Post, p. 1182. Obligation defined, see section 424.

Post, p. 1161. Property of any kind may be transferred, see section 261.

Post, p. 1184. Right arising out of obligation transferable, see section 444.

Post, p. 1161. Right of repossession can be transferred, see section 263.

Post, p. 1161. Transfer may be oral, when, see section 264.

Post, p. 1161. Mere possibility can not be transferred, see section 262.

Products of the mind.

PRODUCTS OF THE MIND

Subject to ownership.

SEC. 240. HOW FAR THE SUBJECT OF OWNERSHIP.—The author of any product of the mind, whether it is an invention, or a composition in letters or art, or a design, with or without delineation, or other graphical representation, has an exclusive ownership therein, and in the representation or expression thereof, which continues so long as the product and the representations or expressions thereof made by him remain in his possession.

Joint authorship.

SEC. 241. JOINT AUTHORSHIP.—Unless otherwise agreed, a product of the mind in the production of which several persons are jointly concerned, is owned by them as follows:

1. If the product is single, in equal proportions;

2. If it is not single, in proportion to the contribution of each.

Transfer.

SEC. 242. TRANSFER.—The owner of any product of the mind, or of any representation or expression thereof, may transfer his property in the same.

Effect of publication; copyright.

SEC. 243. EFFECT OF PUBLICATION.—If the owner of a product of the mind intentionally makes it public, a copy or reproduction may be made public by any person, without responsibility to the owner, subject to the law of copyright.

CROSS REFERENCE

Copyright law, see section 246.

Subsequent inventor, author, etc.

SEC. 244. SUBSEQUENT INVENTOR, AUTHOR, AND SO FORTH.—If the owner of a product of the mind does not make it public, any other person subsequently and originally producing the same thing has the same right therein as the prior author, which is exclusive to the same extent against all persons except the prior author, or those claiming under him.

Private writings.

SEC. 245. PRIVATE WRITINGS.—Letters and other private communications in writing belong to the person to whom they are addressed and delivered; but they cannot be published against the will of the writer, except by authority of law.

Patents, trade-marks, and copyrights.

PATENTS, TRADE-MARKS, AND COPYRIGHTS

Laws extended to Zone.

SEC. 246. PATENT, TRADE-MARK, AND COPYRIGHT LAWS EXTENDED TO ZONE.—The patent, trade-mark, and copyright laws of the United States shall have the same force and effect in the Canal Zone as in continental United States, and the District Court of the Canal Zone is given the same jurisdiction in cases arising under such laws as is exercised by a United States district court.

CROSS REFERENCE

Products of the mind, see sections 240 et seq. *Ante*, p. 1158.

ACQUISITION OF PROPERTY.

CHAPTER 19.—MODES IN WHICH PROPERTY MAY BE ACQUIRED

Property, how acquired.

SECTION 247. PROPERTY, HOW ACQUIRED.—Property is acquired by:

1. Accession;
2. Transfer;
3. Will; or
4. Succession.

ACCESSION.

CHAPTER 20.—ACCESSION

Fixtures.

SECTION 248. FIXTURES.—When a person affixes his property to the land of another, without an agreement permitting him to remove it, the thing affixed, except as provided in section 249, belongs to the owner of the land, unless he chooses to require the former to remove it.

CROSS REFERENCE

Ante, p. 1152. Fixtures, see section 188.

Trade, etc., fixtures. Removal by tenant.

SEC. 249. WHAT FIXTURES TENANT MAY REMOVE.—A tenant may remove from the demised premises, any time during the continuance of his term, anything affixed thereto for the purposes of trade, manufacture, ornament, or domestic use, if the removal can be effected without injury to the premises, unless the thing has, by the manner in which it is affixed, become an integral part of the premises.

Accession by uniting several things.

SEC. 250. ACCESSION BY UNITING SEVERAL THINGS.—When things belonging to different owners have been united so as to form a single thing, and can not be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.

What is deemed principal part.

SEC. 251. PRINCIPAL PART, WHAT.—That part is to be deemed the principal to which the other has been united only for the use, ornament, or completion of the former, unless the latter is the more valuable, and has been united without the knowledge of its owner, who may, in the latter case, require it to be separated and returned to him, although some injury should result to the thing to which it has been united.

SEC. 252. SAME.—If neither part can be considered the principal, within the rule prescribed by section 251, the more valuable, or, if the values are nearly equal, the more considerable in bulk, is to be deemed the principal part.

Uniting materials and workmanship.

SEC. 253. UNITING MATERIALS AND WORKMANSHIP.—If one makes a thing from materials belonging to another, the latter may claim the thing on reimbursing the value of the workmanship, unless the value of the workmanship exceeds the value of the materials, in which case the thing belongs to the maker, on reimbursing the value of the materials.

Inseparable materials.

SEC. 254. INSEPARABLE MATERIALS.—Where one has made use of materials which in part belong to him and in part to another, in order to form a thing of a new description, without having destroyed any of the materials, but in such a way that they can not be separated without inconvenience, the thing formed is common to both proprietors; in proportion, as respects the one, of the materials belonging to him, and as respects the other, of the materials belonging to him and the price of his workmanship.

Materials of several owners.

SEC. 255. MATERIALS OF SEVERAL OWNERS.—When a thing has been formed by the admixture of several materials of different owners, and neither can be considered the principal substance, an owner without whose consent the admixture was made may require a separation, if the materials can be separated without inconvenience. If they can not be thus separated, the owners acquire the thing in common, in proportion to the quantity, quality, and value of their materials; but if the materials of one were far superior to those of the others, both in quantity and value, he may claim the thing on reimbursing to the others the value of their materials.

Willful trespassers.

SEC. 256. WILLFUL TRESPASSERS.—The foregoing sections of this chapter are not applicable to cases in which one willfully uses the materials of another without his consent; but, in such cases, the product belongs to the owner of the material, if its identity can be traced.

Election between thing and its value.

SEC. 257. OWNER MAY ELECT BETWEEN THE THING AND ITS VALUE.—In all cases where one whose material has been used without his knowledge, in order to form a product of a different description, can claim an interest in such product, he has an option to demand either

restitution of his material in kind, in the same quantity, weight, measure, and quality, or the value thereof; or where he is entitled to the product, the value thereof in place of the product.

Wrongdoer liable in damages.

SEC. 258. WRONGDOER LIABLE IN DAMAGES.—One who wrongfully employs materials belonging to another is liable to him in damages, as well as under the foregoing provisions of this chapter.

CHAPTER 21.—TRANSFER OF PROPERTY

TRANSFER OF PROPERTY.

DEFINITION OF TRANSFER

Transfer defined.

SEC. 259. TRANSFER, WHAT.—Transfer is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another.

CROSS REFERENCES

Transfer, see sections 260 and 267.
Transfer in writing is called a grant, see section 267.

Voluntary transfer.

SEC. 260. VOLUNTARY TRANSFER.—A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general; except that a consideration is not necessary to its validity.

CROSS REFERENCES

Gifts, see section 281 et seq. *Post*, p. 1163.
Transfer, see sections 259 and 267.

WHAT MAY BE TRANSFERRED

What may be transferred.

SEC. 261. WHAT MAY BE TRANSFERRED.—Property of any kind may be transferred, except as otherwise provided by sections 262 and 263.

Mere possibility.

SEC. 262. POSSIBILITY.—A mere possibility, not coupled with an interest, can not be transferred.

CROSS REFERENCE

Mere possibility not deemed an interest, see section 215. *Ante*, p. 1155.

Right of repossession can be transferred.

SEC. 263. RIGHT OF REPOSSESSION CAN BE TRANSFERRED.—A right of repossession for breach of condition subsequent, can be transferred.

MODE OF TRANSFER

Mode of transfer.

Orally.

SEC. 264. WHEN ORAL.—A transfer may be made without writing, in every case in which a writing is not expressly required by statute.

CROSS REFERENCES

What contracts must be in writing, see sections 541 and 600. *Post*, pp. 1197, 1204.
Fraudulent instruments and transfers, see sections 1659 and 1660. *Post*, p. 1338.

In writing.

SEC. 265. WHEN MUST BE IN WRITING.—An interest in an existing trust can be transferred only by operation of law, or by a written instrument, subscribed by the person making the transfer, or by his agent.

By sale, etc.
Post, p. 1204.

SEC. 266. TRANSFER BY SALE, AND SO FORTH.—The mode of transferring other personal property by sale is regulated by chapter 34 of this code.

"Grant" defined.

SEC. 267. GRANT, WHAT.—A transfer in writing is called a grant or bill of sale. The term "grant," in this and sections 268 to 280, includes both these instruments.

CROSS REFERENCES

Construction of grants, see section 273 et seq.

Ante, p. 1161. Trasfer,[1] see sections 259 and 260.

Delivery necessary. SEC. 268. DELIVERY NECESSARY.—A grant takes effect, so as to vest the interest intended to be transferred, only upon its delivery by the grantor.

CROSS REFERENCES

Constructive delivery, see section 272.

Post, p. 1197. Contract in writing takes effect only from delivery, see section 543.

Date of delivery. SEC. 269. DATE.—A grant duly executed is presumed to have been delivered at its date.

Absolute delivery necessary. SEC. 270. DELIVERY TO GRANTEE IS NECESSARILY ABSOLUTE.—A grant can not be delivered to the grantee conditionally. Delivery to him, or to his agent as such, is necessarily absolute, and the instrument takes effect thereupon, discharged of any condition on which the delivery was made.

Delivery in escrow. SEC. 271. DELIVERY IN ESCROW.—A grant may be deposited by the grantor with a third person, to be delivered on performance of a condition, and, on delivery by the depositary, it will take effect. While in the possession of the third person, and subject to condition, it is called an escrow.

Constructive delivery. SEC. 272. CONSTRUCTIVE DELIVERY.—Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or

2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

Interpretation of grants.

INTERPRETATION OF GRANTS

SEC. 273. GRANTS, HOW INTERPRETED.—Grants are to be interpreted in like manner with contracts in general, except so far as otherwise provided in this subchapter.

CROSS REFERENCES

Post, pp. 1197, 1198. Interpretation of contracts, see sections 546, 547, and 552.

Ante, p. 1161. Word "grant" includes bill of sale, see section 267.

Limitations, how controlled. SEC. 274. LIMITATIONS, HOW CONTROLLED.—A clear and distinct limitation in a grant is not controlled by other words less clear and distinct.

Recitals, resort to. SEC. 275. RECITALS, WHEN RESORTED TO.—If the operative words of a grant are doubtful, recourse may be had to its recitals to assist the construction.

CROSS REFERENCE

Post, p. 1199. Interpretation of doubtful words, see section 565.

Interpretation against grantor. SEC. 276. INTERPRETATION AGAINST GRANTOR.—A grant is to be interpreted in favor to the grantee, except that a reservation in any grant, and every grant by a public officer or body, as such, to a private party, is to be interpreted in favor of the grantor.

Irreconcilable provisions. SEC. 277. IRRECONCILABLE PROVISIONS.—If several parts of a grant are absolutely irreconcilable, the former part prevails.

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[1] So in original.

Meaning of "heirs" and "issue" in certain remainders.

SEC. 278. MEANING OF "HEIRS" AND "ISSUE," IN CERTAIN REMAINDERS.—Where a future interest is limited by a grant to take effect on the death of any person without heirs, or heirs of his body, or without issue, or in equivalent words, such words must be taken to mean successors, or issue living at the death of the person named as ancestor.

CROSS REFERENCE

"Heirs" and "Issue," interpretation of, see section 366. *Post*, p. 1174.

EFFECT OF TRANSFER

Effect of transfer.

What title passes.

SEC. 279. WHAT TITLE PASSES.—A transfer vests in the transferee all the actual title to the thing transferred which the transferrer then has, unless a different intention is expressed or is necessarily implied.

Incidents.

SEC. 280. INCIDENTS.—The transfer of a thing transfers also all its incidents, unless expressly excepted; but the transfer of an incident to a thing does not transfer the thing itself.

CROSS REFERENCE

What passes, see section 1728. *Post*, p. 1346.

Gifts defined.

SEC. 281. GIFTS DEFINED.—A gift is a transfer of personal property, made voluntarily, and without consideration.

CROSS REFERENCES

Gift as fraud on creditors, see sections 1659 et seq. *Post*, p. 1338.

Voluntary transfers, see sections 260 and 1659. *Ante*, p. 1161; *post*, p. 1338.

How made.

SEC. 282. GIFT, HOW MADE.—A verbal gift is not valid, unless the means of obtaining possession and control of the thing are given, nor, if it is capable of delivery, unless there is an actual or symbolical delivery of the thing to the donee.

Not revocable.

SEC. 283. GIFT NOT REVOCABLE.—A gift, other than a gift in view of death, can not be revoked by the giver.

CROSS REFERENCE

Revoking gifts mortis causa, see section 286.

Gift causa mortis.

SEC. 284. GIFT IN VIEW OF DEATH, WHAT.—A gift in view of death is one which is made in contemplation, fear, or peril of death, and with intent that it shall take effect only in case of the death of the giver.

CROSS REFERENCE

Revocation, see section 286.

When gift presumed to be.

SEC. 285. WHEN GIFT PRESUMED TO BE IN VIEW OF DEATH.—A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Revocation.

SEC. 286. REVOCATION OF GIFT IN VIEW OF DEATH.—A gift in view of death may be revoked by the giver at any time, and is revoked by his recovery from the illness, or escape from the peril, under the presence of which it was made, or by the occurrence of any event which would operate as a revocation of a will made at the same time, but when the gift has been delivered to the donee, the rights of a bona fide purchaser from the donee before the revocation, shall not be affected by the revocation.

CROSS REFERENCE

Gift inter vivos not revocable, see section 283.

Effect of will upon.

SEC. 287. EFFECT OF WILL UPON GIFT.—A gift in view of death is not affected by a previous will; nor by a subsequent will, unless it expresses an intention to revoke the gift.

When treated as legacy.

SEC. 288. WHEN TREATED AS LEGACY.—A gift in view of death must be treated as a legacy, so far as relates only to the creditors of the giver.

PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS.

CHAPTER 22.—PROOF AND ACKNOWLEDGMENT OF INSTRUMENTS

By whom taken. In Canal Zone.

SEC. 289. BY WHOM ACKNOWLEDGMENTS MAY BE TAKEN IN CANAL ZONE.—The proof or acknowledgment of any instrument required by law to be proved or acknowledged may be made before the district judge, the clerk of the district court, a magistrate, or before any notary public of the Canal Zone.

Without Canal Zone.

SEC. 290. BY WHOM TAKEN WITHOUT CANAL ZONE.—The proof or acknowledgment of an instrument may be made without the Canal Zone, but within the United States, and within the jurisdiction of the officer, before the judge of any court of record or the clerk thereof or before any notary public within any State, Territory, District, or possession of the United States.

Taken in foreign country.

SEC. 291. BY WHOM TAKEN IN FOREIGN COUNTRY.—If an instrument is one executed in a foreign country, the same may be acknowledged before any diplomatic or consular officer or commercial agent of the United States accredited to such country or before any officer of such foreign country authorized to take acknowledgments, the signature and official character of such officer to be certified by a diplomatic, consular, or commercial official of the United States.

Power to issue certificates on.

SEC. 292. OFFICERS EMPOWERED TO ISSUE PROPER CERTIFICATES.—The officers authorized to take acknowledgments under sections 289 to 291 are empowered to issue proper certificates of the same.

Requisites for acknowledgment.

SEC. 293. REQUISITES FOR ACKNOWLEDGMENT.—The acknowledgment of an instrument must not be taken unless the officer taking it knows or has satisfactory evidence, on the oath or affirmation of a credible witness, that the person making such acknowledgment is the individual who is described in and who executed the instrument; or, if executed by a corporation, that the person making such acknowledgment is the president or secretary of such corporation, or other person who executed it on its behalf.

Officer must indorse.

SEC. 294. OFFICER MUST INDORSE CERTIFICATE.—An officer taking the acknowledgment of an instrument must indorse thereon or attach thereto a certificate substantially in the forms hereinafter prescribed.

Form.

SEC. 295. GENERAL FORM OF CERTIFICATE.—The certificate of acknowledgment, unless it is otherwise in this chapter provided, must be substantially in the following form: "United States of America, Canal Zone, ss. On this ——— day of ———, in the year ———, before me (here insert name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument, and acknowledged that he (she or they) executed the same": *Provided, however*, That any acknowledgment taken without the Canal Zone in accordance with the laws of the place where the acknowledgment is made, shall be sufficient in the Canal Zone: *And provided further*, That the certificate of the clerk of a court of record of the county or district where such acknowl-

edgment is taken, that the officer certifying to the same is authorized by law so to do, and that the signature of the said officer to such certificate is his true and genuine signature, and that such acknowledgment is taken in accordance with the laws of the place where the same is made, shall be prima facie evidence of the facts stated in the certificate of said clerk.

Acknowledgment by corporation.

SEC. 296. FORM OF ACKNOWLEDGMENT BY CORPORATION.—The certificate of acknowledgment of an instrument executed by a corporation must be substantially in the following form:

"UNITED STATES OF AMERICA,

Canal Zone, ss:

"On this ——— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the president (or the secretary) of the corporation that executed the within instrument (where, however, the instrument is executed in behalf of the corporation by some one other than the president or secretary insert: known to me (or proved to me on the oath of ———) to be the person who executed the within instrument on behalf of the corporation therein named and acknowledged to me that such corporation executed the same)."

By attorney in fact.

SEC. 297. FORM OF CERTIFICATE OF ACKNOWLEDGMENT BY ATTORNEY IN FACT.—The certificate of acknowledgment by an attorney in fact must be substantially in the following form:

"UNITED STATES OF AMERICA,

Canal Zone, ss:

"On this —— day of ———, in the year ———, before me (here insert the name and quality of the officer), personally appeared ———, known to me (or proved to me on the oath of ———) to be the person whose name is subscribed to the within instrument as the attorney in fact of ———, and acknowledged to me that he subscribed the name of ——— thereto as principal, and his own name as attorney in fact."

Officers' signatures.

SEC. 298. OFFICERS MUST AFFIX THEIR SIGNATURES.—Officers taking and certifying acknowledgments, or proof of instruments for record, must authenticate their certificates by affixing thereto their signatures, followed by the names of their offices; also, their seals of office, if by the laws of the State or country where the acknowledgment or proof is taken, or by authority of which they are acting, they are required to have official seals.

Proof of execution.

SEC. 299. PROOF OF EXECUTION, HOW MADE.—Proof of the execution of an instrument, when not acknowledged, may be made either:

1. By the party executing it, or either of them; or,
2. By a subscribing witness; or,
3. By other witnesses, in cases mentioned in section 302.

Witness must be personally known to officer.

SEC. 300. WITNESS MUST BE PERSONALLY KNOWN TO OFFICER.—If by a subscribing witness, such witness must be personally known to the officer taking the proof to be the person whose name is subscribed to the instrument as a witness, or must be proved to be such by the oath of a credible witness.

Witness must prove, what.

SEC. 301. WITNESS MUST PROVE, WHAT.—The subscribing witness must prove that the person whose name is subscribed to the instrument as a party is the person described in it, and that such person executed it, and that the witness subscribed his name thereto as a witness.

Proof by handwriting.

SEC. 302. HANDWRITING MAY BE PROVED, WHEN.—The execution of an instrument may be established by proof of the handwriting of the party and of a subscribing witness, if there is one, in the following cases:

1. When the parties and all the subscribing witnesses are dead; or,

2. When the parties and all the subscribing witnesses are nonresidents of the Canal Zone; or,

3. When the place of their residence is unknown to the party desiring the proof, and can not be ascertained by the exercise of due diligence; or,

4. When the subscribing witness conceals himself, or can not be found by the officer by the exercise of due diligence in attempting to serve the subpœna or attachment; or,

5. In case of the continued failure or refusal of the witness to testify, for the space of one hour, after his appearance.

What handwriting must prove.

SEC. 303. EVIDENCE OF HANDWRITING MUST PROVE, WHAT.—The evidence taken under section 302 must satisfactorily prove to the officer the following facts:

(1) The existence of one or more of the conditions mentioned therein; and,

(2) That the witness testifying knew the person whose name purports to be subscribed to the instrument as a party, and is well acquainted with his signature, and that it is genuine; and,

(3) That the witness testifying personally knew the person who subscribed the instrument as a witness, and is well acquainted with his signature, and that it is genuine; and,

(4) The place of residence of the witness.

Certificate of proof.

SEC. 304. CERTIFICATE OF PROOF.—An officer taking proof of the execution of any instrument must, in his certificate indorsed thereon or attached thereto, set forth all the matters required by law to be done or known by him, or proved, before him on the proceeding, together with the names of all the witnesses examined before him, their places of residence respectively, and the substance of their testimony.

Authority of officers.

SEC. 305. OFFICERS AUTHORIZED TO DO CERTAIN THINGS.—Officers authorized to take the proof of instruments are authorized in such proceedings:

1. To administer oaths or affirmations;

2. To employ and swear interpreters;

Ante, p. 1111.

3. To issue subpœnas, as prescribed in section 1156 of the Code of Civil Procedure;

Ante, p. 1112.

4. To punish for contempt, as prescribed in sections 1160, 1162, and 1163, of the Code of Civil Procedure.

Ante, p. 1112.

The civil damages and forfeiture to the party aggrieved are prescribed in section 1161 of the Code of Civil Procedure.

Correction of improper certificate.

SEC. 306. WHEN INSTRUMENT IS IMPROPERLY CERTIFIED, PARTY MAY HAVE ACTION TO CORRECT ERROR.—When the acknowledgment or proof of the execution of an instrument is properly made, but defectively certified, any party interested may have an action in the district court to obtain a judgment correcting the certificate.

Judgment of proof of an instrument.

SEC. 307. IN CERTAIN CASES, PARTIES INTERESTED MAY OBTAIN JUDGMENT OF PROOF OF AN INSTRUMENT.—Any person interested under an instrument entitled to be proved for record, may institute an action in the district court against the proper parties to obtain a judgment proving such instrument.

Effect.

SEC. 308. EFFECT OF JUDGMENT IN SUCH ACTION.—A certified copy of the judgment in a proceeding instituted under section 306 or section 307, showing the proof of the instrument, and attached thereto, entitled such instrument to record, with like effect as if acknowledged.

Execution, etc., provisions not retroactive.

SEC. 309. INSTRUMENTS HERETOFORE MADE TO BE GOVERNED BY THEN EXISTING LAWS.—The legality of the execution, acknowledgment, proof, form, or record of any instrument made before this code goes into effect, executed, acknowledged, proved, or recorded is not affected by anything contained in this chapter, but depends for its validity and legality upon the laws in force when the act was performed.

Deeds, etc., affecting lands in District of Columbia or Territories.

SEC. 310. DEEDS, AND SO FORTH, AFFECTING LAND IN DISTRICT OF COLUMBIA OR ANY TERRITORY OF UNITED STATES.—Deeds and other instruments affecting land situate in the District of Columbia or any Territory of the United States may be acknowledged in the Canal Zone before any notary public or judge, appointed therein by proper authority, or by any officer therein who has ex officio the powers of a notary public: *Provided*, That the certificate by such notary in the Canal Zone shall be accompanied by the certificate of the governor or acting governor to the effect that the notary taking said acknowledgment was in fact the officer he purported to be; and any deeds or other instruments affecting lands so situate, so acknowledged since January 1, 1905, and accompanied by such certificate shall have the same effect as such deeds or other instruments hereafter so acknowledged and certified. (Act Cong. June 28, 1906, c. 3585, 34 Stat. 552.)

Proviso.

Certificate of governor.

Vol. 34, p. 552.

CHAPTER 23.—EXECUTION AND REVOCATION OF WILLS

EXECUTION AND REVOCATION OF WILLS.

Capacity to make.

SEC. 311. WHO MAY MAKE A WILL.—Every person over the age of eighteen years, of sound mind, may, by last will, dispose of all his estate, and such estate not disposed of by will is succeeded to as provided in chapter 26 of this code, being chargeable in both cases with the payment of all the decedent's debts, as provided in the Code of Civil Procedure.

CROSS REFERENCES

Disposition of property in case of intestacy, see section 401 et seq. *Post*, p. 1178.
Effect of marriage of man on his will, see section 335. *Post*, p. 1170.
Validity of will, see section 315.
Wills of married women, see section 313.
Wills of unmarried women revoked by marriage, see section 336. *Post*, p. 1170.

Will procured by fraud.

SEC. 312. WILL, OR PART THEREOF, PROCURED BY FRAUD.—A will, or part of a will, procured to be made by duress, menace, fraud, or undue influence, may be denied probate; and a revocation, procured by the same means, may be declared void.

CROSS REFERENCES

Revocation of will, see section 329. *Post*, p. 1169.
Undue influence as affecting contracts, see section 505. *Post*, p. 1193.

Will of married woman.

SEC. 313. WILL OF MARRIED WOMAN.—A married woman may dispose of all her separate estate by will, without the consent of her husband, and may alter or revoke the will in like manner as if she were single. Her will must be executed and proved in like manner as other wills.

What may pass by will.

SEC. 314. WHAT MAY PASS BY WILL.—Every interest in property, to which heirs, husband, widow, or next of kin might succeed, may be disposed of by will, except as otherwise provided in sections 417 and 418.

Execution of will.

SEC. 315. WRITTEN WILL, HOW TO BE EXECUTED.—Every will, other than a nuncupative will, must be in writing; and every will, other than an olographic will, and a nuncupative will, must be executed and attested as follows:

1. It must be subscribed at the end thereof by the testator himself, or some person in his presence and by his direction must subscribe his name thereto;

2. The subscription must be made in the presence of the attesting witnesses, or be acknowledged by the testator to them to have been made by him or by his authority;

3. The testator must, at the time of subscribing or acknowledging the same, declare to the attesting witnesses that the instrument is his will; and,

4. There must be two attesting witnesses, each of whom must sign the same as a witness, at the end of the will, at the testator's request and in his presence.

CROSS REFERENCES

Conjoint or mutual will, see section 318.
Post, p. 1169. Nuncupative will, see sections 325 et seq.
Olographic will, see section 316.
Witness to add residence, see section 317.

"Olographic will," defined.

SEC. 316. DEFINITION OF AN OLOGRAPHIC WILL.—An olographic will is one that is entirely written, dated, and signed by the hand of the testator himself. It is subject to no other form, and may be made in or out of the Canal Zone, and need not be witnessed.

Witness to add residence.

SEC. 317. WITNESS TO ADD RESIDENCE.—A witness to a written will must write, with his name, his place of residence; and a person who subscribes the testator's name, by his direction, must write his own name as a witness to the will. But a violation of this section does not affect the validity of the will.

Mutual will.

SEC. 318. MUTUAL WILL.—A conjoint or mutual will is valid, but it may be revoked by any of the testators in like manner with any other will.

Competency of witness.

SEC. 319. COMPETENCY OF SUBSCRIBING WITNESS.—If the subscribing witnesses to a will are competent at the time of attesting its execution, their subsequent incompetency, from whatever cause it may arise, does not prevent the probate and allowance of the will, if it is otherwise satisfactorily proved.

Gifts to subscribing witness void; creditors competent witnesses.

SEC. 320. GIFTS TO SUBSCRIBING WITNESSES VOID; CREDITORS COMPETENT WITNESSES.—All beneficial legacies and gifts whatever, made or given in any will to a subscribing witness thereto, are void, unless there are two other competent subscribing witnesses to the same; but a mere charge on the estate of the testator for the payment of debts does not prevent his creditors from being competent witnesses to his will.

Subscribing witness entitled to his share by succession.

SEC. 321. SUBSCRIBING WITNESS ENTITLED TO HIS SHARE BY SUCCESSION.—If a witness, to whom any beneficial legacy or gift, void by section 320, is made, would have been entitled to any share of the estate of the testator, in case the will should not be established, he succeeds to so much of the share as would be distributed to him, not exceeding the bequest made to him in the will, and he may recover the same of the other legatees named in the will, in proportion to and out of the parts bequeathed to them.

Foreign wills.

SEC. 322. WILL MADE OUT OF THE CANAL ZONE.—A will made out of the Canal Zone which might be proved and allowed by the laws of the state or country in which it was made, may be proved, allowed, and recorded in the Canal Zone, and shall have the same effect as if executed according to the laws of the Zone. ((E. O. Mar. 22, 1907, § 670;) Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1914, § 10; Act Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.)

Executive Orders Nos. 597½, 1898. Vol. 37, p. 561; Vol. 42, p. 1006.

CROSS REFERENCE

Probate of foreign wills, see the Code of Civil Procedure. *Ante*, p. 1026.

SEC. 323. WILL MADE HERE BY ALIEN.—A will made within the Canal Zone by a citizen or subject of another state or country, which is executed in accordance with the law of the state or country of which he is a citizen or subject, and which might be proved and allowed by the law of his own state or country, may be proved, allowed, and recorded in the Canal Zone, and shall have the same effect as if executed according to the laws of the Zone. ((E. O. Mar. 22, 1907, § 671;) Act Cong. Aug. 24, 1912, c. 390, §§ 2, 9, 37 Stat. 561; E. O. Mar. 12, 1912, § 10; Act. Cong. Sept. 21, 1922, c. 370, § 3, 42 Stat. 1006.) Will made by alien. Executive Order No. 597½. Vol. 37, p. 561; Vol. 42, p. 1006.

SEC. 324. REPUBLICATION BY CODICIL.—The execution of a codicil, referring to a previous will, has the effect to republish the will, as modified by the codicil. Republication by codicil.

SEC. 325. NUNCUPATIVE WILL, HOW TO BE EXECUTED.—A nuncupative will is not required to be in writing, nor to be declared or attested with any formalities. Nuncupative will, how executed.

CROSS REFERENCE

Probating nuncupative wills, see sections 326 and 327.

SEC. 326. REQUISITES OF VALID NUNCUPATIVE WILL.—To make a nuncupative will valid, and to entitle it to be admitted to probate, the following requisites must be observed: Requisites of.

(1) The estate bequeathed must not exceed in value the sum of $1,000.

(2) It must be proved by two witnesses who were present at the making thereof, one of whom was asked by the testator, at the time, to bear witness that such was his will, or to that effect.

(3) The decedent must, at the time, have been in actual military service in the field, or doing duty on shipboard at sea, and in either case in actual contemplation, fear, or peril of death, or the decedent must have been, at the time, in expectation of immediate death from an injury received the same day.

SEC. 327. PROOF OF NUNCUPATIVE WILLS.—No proof must be received of any nuncupative will, unless it is offered within six months after speaking the testamentary words, nor unless the words, or the substance thereof, were reduced to writing within thirty days after they were spoken. Proof.

SEC. 328. PROBATE OF NUNCUPATIVE WILLS.—No probate of any nuncupative will must be granted for fourteen days after the death of the testator, nor must any nuncupative will be at any time proved, unless the testamentary words, or the substance thereof, be first committed to writing, and process issued to call in the widow, or other persons interested, to contest the probate of such will, if they think proper. Probate of.

SEC. 329. WRITTEN WILL, HOW REVOKED.—Except in the cases in this chapter mentioned, no written will, nor any part thereof, can be revoked or altered otherwise than: Revocation.

1. By a written will, or other writing of the testator, declaring such revocation or alteration, and executed with the same formalities with which a will should be executed by such testator; or,

2. By being burned, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking the same, by the testator himself, or by some person in his presence and by his direction.

SEC. 330. EVIDENCE OF REVOCATION.—When a will is canceled or destroyed by any other person than the testator, the direction of the Evidence of.

testator, and the fact of such injury or destruction, must be proved by two witnesses.

When in duplicate.

SEC. 331. REVOCATION OF DUPLICATE.—The revocation of a will, executed in duplicate, may be made by revoking one of the duplicates.

By subsequent will.

SEC. 332. REVOCATION BY SUBSEQUENT WILL.—A prior will is not revoked by a subsequent will, unless the latter contains an express revocation, or provisions wholly inconsistent with the terms of the former will; but in other cases the prior will remains effectual so far as consistent with the provisions of the subsequent will.

Antecedent not revived by revocation of subsequent will.

SEC. 333. ANTECEDENT NOT REVIVED BY REVOCATION OF SUBSEQUENT WILL.—If, after making a will, the testator duly makes and executes a second will, the destruction, cancellation, or revocation of such second will does not revive the first will, unless it appears by the terms of such revocation that it was the intention to revive and give effect to the first will, or unless, after such destruction, cancellation, or revocation, the first will is duly republished.

By marriage and birth of issue.

SEC. 334. REVOCATION BY MARRIAGE AND BIRTH OF ISSUE.—If, after having made a will, the testator marries, and has issue of such marriage, born either in his lifetime or after his death, and the wife or issue survives him, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Will as affected by marriage of man.

SEC. 335. EFFECT OF MARRIAGE OF MAN ON HIS WILL.—If, after making a will, the testator marries, and the wife survives the testator, the will is revoked, unless provision has been made for her by marriage contract, or unless she is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

Of woman.

SEC. 336. EFFECT OF MARRIAGE OF WOMAN ON HER WILL.—If, after making a will, the testatrix marries, and the husband survives the testatrix, the will is revoked, unless provision has been made for him by marriage contract, or unless he is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

Revocation by marriage and birth of issue.

SEC. 337. REVOCATION BY MARRIAGE AND BIRTH OF ISSUE.—If, after making a will, the testatrix marries, and has issue of said marriage, born either in her lifetime or after her death, and the husband or issue survives her, the will is revoked, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Contract of sale not revocation.

SEC. 338. CONTRACT OF SALE NOT REVOCATION.—An agreement made by a testator, for the sale or transfer of property disposed of by a will previously made, does not revoke such disposal; but the property passes by the will, subject to the same remedies on the testator's agreement, for a specific performance or otherwise against the legatees, as might be had against the testator's successors, if the same had passed by succession.

Mortgage.

SEC. 339. MORTGAGE NOT REVOCATION OF WILL.—A charge or encumbrance upon any estate, for the purpose of securing the payment of money or the performance of any covenant or agreement, is not a revocation of any will relating to the same estate which was previously executed; but the legacies therein contained must pass, subject to such charge or encumbrance.

Transfer, when not a revocation.

SEC. 340. TRANSFER, WHEN NOT A REVOCATION.—A transfer, settlement, or other act of a testator, by which his interest in a thing previously disposed of by his will is altered, but not wholly divested, is not a revocation; but the will passes the property which would otherwise devolve by succession.

CROSS REFERENCES

Ademption of legacies, see section 382. *Post*, p. 1175.
Revocation, see sections 341 and 342.

When a revocation.

SEC. 341. WHEN IT IS A REVOCATION.—If the instrument by which an alteration is made in the testator's interest in a thing previously disposed of by his will expresses his intent that it shall be a revocation, or if it contains provisions wholly inconsistent with the terms and nature of the testamentary disposition, it operates as a revocation thereof, unless such inconsistent provisions depend on a condition or contingency by reason of which they do not take effect.

Revocation of codicils.

SEC. 342. REVOCATION OF CODICILS.—The revocation of a will revokes all its codicils.

Application of provisions as to revocations.

SEC. 343. APPLICATION OF PROVISIONS AS TO REVOCATIONS.—The provisions of this chapter in relation to the revocation of wills apply to all wills made by any testator living at the expiration of one year from the time it takes effect.

After-born child.

SEC. 344. AFTER-BORN CHILD, UNPROVIDED FOR, TO SUCCEED.—Whenever a testator has a child born after the making of his will, either in his lifetime or after his death, and dies leaving such child unprovided for by any settlement, and neither provided for nor in any way mentioned in his will, the child succeeds to the same portion of the testator's property that he would have succeeded to if the testator had died intestate.

CROSS REFERENCE

Succession by posthumous children, see sections 213, 370, and 419. *Ante*, p. 1155; *post*, pp. 1174, 1181.

Children, etc., unprovided for.

SEC. 345. CHILDREN OR ISSUE OF CHILDREN OF TESTATOR UNPROVIDED FOR BY HIS WILL.—When any testator omits to provide in his will for any of his children, or for the issue of any deceased child, unless it appears that such omission was intentional, such child, or the issue of such child, has the same share in the estate of the testator as if he had died intestate, and succeeds thereto as provided in section 344.

After-born children, etc., payment of share.

SEC. 346. SHARE OF AFTER-BORN CHILD, OUT OF WHAT PART OF ESTATE TO BE PAID.—When any share of the estate of a testator is assigned to a child born after the making of a will, or to a child, or the issue of a child, omitted in the will, as hereinbefore mentioned, the same must first be taken from the estate not disposed of by the will, if any; if that is not sufficient, so much as may be necessary must be taken from all the legatees, in proportion to the value they may respectively receive under the will, unless the obvious intention of the testator in relation to some specific bequest, or other provision in the will, would thereby be defeated; in such case, such specific legacy or provision may be exempted from such apportionment, and a different apportionment, consistent with the intention of the testator, may be adopted.

Effect of advancements to.

SEC. 347. ADVANCEMENT DURING LIFETIME OF TESTATOR.—If such children, or their descendants, so unprovided for, had an equal proportion of the testator's estate bestowed on them in the testator's lifetime, by way of advancement, they take nothing in virtue of the provisions of sections 344 to 346.

CROSS REFERENCE

Post, p. 1180. Advancements in cases of intestacy, see sections 411 to 415.

When legatee dies before testator.

SEC. 348. DISTRIBUTION OF ESTATE WHEN LEGATEE DIES BEFORE TESTATOR.—When any estate is bequeathed to any child or other relation of the testator, and the legatee dies before the testator, leaving lineal descendants, or any such child or other relation is named in a will as a legatee and is dead at the time the will is executed, but leaves lineal descendants surviving the testator, such descendants take the estate so given by the will in the same manner as the legatee would have done had he survived the testator.

CROSS REFERENCES

Post, p. 1181. "By right of representation," term defined, see section 419.

Post, p. 1175. Death of legatee, legacy fails when, see sections 374 and 375.

Bequests for charitable purposes.

SEC. 349. RESTRICTION ON BEQUESTS FOR CHARITABLE USES; EXCEPTIONS.—No estate shall be bequeathed to any charitable or benevolent society or corporation, or to any person or persons in trust for charitable uses, except the same be done by will duly executed at least thirty days before the decease of the testator; and if so made at least thirty days prior to such death, such legacy shall be valid: *Provided*, that no such bequest shall collectively exceed one-third of the estate of the testator, leaving legal heirs, and in such case a pro rata deduction from such bequests shall be made so as to reduce the aggregate thereof to one-third of such estate; and all dispositions of property made contrary hereto shall be void, and go to the residuary legatee, next of kin, or heirs, according to law: *Provided, however*, That nothing in this section contained shall apply to bequests or devises made by will executed at least six months prior to the death of a testator who leaves no parent, husband, wife, child or grandchild, or when all of such heirs shall have by writing, executed at least six months prior to his death, waived the restriction contained herein.

Provisos.
Limitation on amount.

Exception.

Execution provisions not retroactive.

SEC. 350. EXECUTION OF PRIOR WILLS NOT AFFECTED.—The provisions of this chapter do not impair the validity of the execution of any will made before it takes effect.

INTERPRETATION OF WILLS; EFFECT OF VARIOUS PROVISIONS.

CHAPTER 24.—INTERPRETATION OF WILLS, AND EFFECT OF VARIOUS PROVISIONS

Intention of testator.

SEC. 351. TESTATOR'S INTENTION TO BE CARRIED OUT.—A will is to be construed according to the intention of the testator. Where his intention can not have effect to its full extent, it must have effect as far as possible.

CROSS REFERENCES

Post, p. 1175. Construction of will made before code went into effect, see section 383.

Declaration of testator as evidence, see section 352.

Post, p. 1177. Intention of testator, see section 395.

To be ascertained from will.

SEC. 352. INTENTION TO BE ASCERTAINED FROM THE WILL.—In case of uncertainty arising upon the face of a will, as to the application of any of its provisions, the testator's intention is to be ascertained from the words of the will, taking into view the circumstances under which it was made, exclusive of his oral declarations.

CROSS REFERENCE

Testator's declarations as to intention, see section 371. *Post*, p. 1174.

Rules of interpretation.

SEC. 353. RULES OF INTERPRETATION.—In interpreting a will, subject to the law of the Canal Zone, the rules prescribed by the following sections of this chapter are to be observed, unless an intention to the contrary clearly appears.

Several instruments construed as one.

SEC. 354. SEVERAL INSTRUMENTS ARE TO BE TAKEN TOGETHER.—Several testamentary instruments, executed by the same testator, are to be taken and construed together as one instrument.

Harmonizing various parts.

SEC. 355. HARMONIZING VARIOUS PARTS.—All the parts of a will are to be construed in relation to each other, and so as, if possible, to form one consistent whole; but where several parts are absolutely irreconcilable the latter must prevail.

Case where bequest not affected.

SEC. 356. IN WHAT CASE BEQUEST NOT AFFECTED.—A clear and distinct bequest can not be affected by an [1] reasons assigned therefor, or by any other words not equally clear and distinct, or by inference or argument from other parts of the will, or by an inaccurate recital of or reference to its contents in another part of the will.

CROSS REFERENCE

Intention of testator, see sections 351 et seq. *Post*, p. 1172.

Ambiguous or doubtful provisions.

SEC. 357. WHEN AMBIGUOUS OR DOUBTFUL.—Where the meaning of any part of a will is ambiguous or doubtful. it may be explained by any reference thereto, or a recital thereof, in another part of the will.

Construction of words.

SEC. 358. WORDS TAKEN IN ORDINARY SENSE.—The words of a will are to be taken in their ordinary and grammatical sense, unless a clear intention to use them in another sense can be collected, and that other can be ascertained.

To receive an operative construction.

SEC. 359. WORDS TO RECEIVE AN OPERATIVE CONSTRUCTION.—The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative.

CROSS REFERENCE

Harmonizing various parts, see section 355.

Intestacy to be avoided.

SEC. 360. INTESTACY TO BE AVOIDED.—Of two modes of interpreting a will, that is to be preferred which will prevent a total intestacy.

Technical words.

SEC. 361. EFFECT OF TECHNICAL WORDS.—Technical words in a will are to be taken in their technical sense, unless the context clearly indicates a contrary intention, or unless it satisfactorily appears that the will was drawn solely by the testator, and that he was unacquainted with such technical sense.

CROSS REFERENCE

Technical words, how construed, see sections 11 and 556. *Ante*, p. 1124; *post*, p. 1198.

Technical words not necessary.

SEC. 362. TECHNICAL WORDS NOT NECESSARY.—Technical words are not necessary to give effect to any species of disposition by a will.

Power to devise; how executed.

SEC. 363. POWER TO DEVISE, HOW EXECUTED BY TERMS OF WILL.—Property embraced in a power to devise, passes by a will purporting to devise all the property of the testator.

Bequest of all of property.

SEC. 364. BEQUEST OF ALL OF PROPERTY.—A bequest of all of the testator's property, in express terms, or in any other terms denoting such intent, passes all the property which he was entitled to dispose of by will at the time of his death.

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[1] So in original.

CROSS REFERENCE

Post, p. 1176. General and specific legacies, see section 384.

Residuary clause. SEC. 365. RESIDUARY CLAUSE.—A bequest of the residue of the testator's personal property, passes all the personal property which he was entitled to bequeath at the time of his death, not otherwise effectually bequeathed by his will.

"Heirs," "relatives," etc. SEC. 366. "HEIRS," "RELATIVES," "ISSUE," "DESCENDANTS," ETC.—A testamentary disposition to "heirs," "relations," "nearest relations," "representatives," "legal representatives," or "personal representatives," or "family," "issue," "descendants," "nearest" of "next of kin" or any person, without other words of qualification, and when the terms are used as words of donation, and not of limitation, vests the property in those who would be entitled to succeed to the property of such person, according to the provisions of chapter 26 of this code on succession.

CROSS REFERENCE

Ante, p. 1163. "Issue," interpretation of, see section 278.

Words of donation, etc. SEC. 367. WORDS OF DONATION AND OF LIMITATION.—The terms mentioned in section 366 are used as words of donation, and not of limitation, when the property is given to the person so designated, directly, and not as a qualification of an estate given to the ancestor of such person.

Time to which words refer. SEC. 368. TO WHAT TIME WORDS REFER.—Words in a will referring to death or survivorship, simply, relate to the time of the testator's death, unless possession is actually postponed, when they must be referred to the time of possession.

Bequests to a class. SEC. 369. BEQUEST TO A CLASS.—A testamentary disposition to a class includes every person answering the description at the testator's death; but when the possession is postponed to a future period, it includes also all persons coming within the description before the time to which possession is postponed.

CROSS REFERENCE

Posthumous children, see section 370.

Unborn child of class. SEC. 370. WHEN CHILD BORN AFTER TESTATOR'S DEATH TAKES UNDER WILL.—A child conceived before, but not born until after a testator's death, or any other period when a disposition to a class vests in right or in possession, takes, if answering to the description of the class.

CROSS REFERENCES

Ante, p. 1125. Child en ventre sa mere, see section 18.

Ante, pp. 1155, 1171; *post*, p. 1181. Succession by posthumous children, see sections 213, 344, and 419.

Mistakes and omissions. SEC. 371. MISTAKES AND OMISSIONS.—When, applying a will, it is found that there is an imperfect description, or that no person or property exactly answers the description, mistakes and omissions must be corrected, if the error appears from the context of the will or from extrinsic evidence; but evidence of the declarations of the testator as to his intentions can not be received.

CROSS REFERENCE

Ante, p. 1172. Evidence of intention, see section 352.

When bequests vest. SEC. 372. WHEN BEQUESTS VEST.—Testamentary dispositions, including bequests to a person on attaining majority, are presumed to vest at the testator's death.

SEC. 373. WHEN CAN NOT BE DIVESTED.—A testamentary disposition, when vested, can not be divested unless upon the occurrence of the precise contingency prescribed by the testator for that purpose. When can not be divested.

CROSS REFERENCE

Bequest to a class, see section 369.

SEC. 374. DEATH OF A LEGATEE.—If a legatee dies during the lifetime of the testator, the testamentary disposition to him fails, unless an intention appears to substitute some other in his place, except as provided in section 348. Death of legatee. *Ante*, p. 1172.

SEC. 375. INTERESTS IN REMAINDER ARE NOT AFFECTED.—The death of a legatee of a limited interest before the testator's death does not defeat the interests of persons in remainder, who survive the testator. Interests in remainder not affected.

SEC. 376. CONDITIONAL BEQUESTS.—A conditional disposition is one which depends upon the occurrence of some uncertain event, by which it is either to take effect or be defeated. Conditional bequest.

CROSS REFERENCES

Conditions of ownership, see section 217 et seq. *Ante*, p. 1155.
Conditional obligations, see sections 430 to 438. *Post*, p. 1183.

SEC. 377. CONDITION PRECEDENT, WHAT.—A condition precedent in a will is one which is required to be fulfilled before a particular disposition takes effect. Condition precedent.

CROSS REFERENCE

Conditions precedent, what are, see sections 218 and 432. *Ante*, p. 1155; *post*, p. 1183.

SEC. 378. EFFECT OF CONDITION PRECEDENT.—Where a testamentary disposition is made upon a condition precedent, nothing vests until the condition is fulfilled, except where such fulfillment is impossible, in which case the disposition vests, unless the condition was the sole motive thereof, and the impossibility was unknown to the testator, or arose from an unavoidable event subsequent to the execution of the will. Effect of.

SEC. 379. CONDITIONS PRECEDENT, WHEN DEEMED PERFORMED.—A condition precedent in a will is to be deemed performed when the testator's intention has been substantially, though not literally, complied with. Performance.

SEC. 380. CONDITIONS SUBSEQUENT, WHAT.—A condition subsequent is where an estate or interest is so given as to vest immediately, subject only to be divested by some subsequent act or event. Condition subsequent.

CROSS REFERENCE

Conditions subsequent, see sections 218 and 434. *Ante*, p. 1155; *post*, p. 1183.

SEC. 381. LEGATEES TAKE AS TENANTS IN COMMON.—A legacy given to more than one person vests in them as owners in common. Legatees take as tenants in common.

SEC. 382. ADVANCEMENTS, WHEN ADEMPTIONS.—Advancements or gifts are not to be taken as ademptions of general legacies, unless such intention is expressed by the testator in writing. Advancement, when ademptions.

CROSS REFERENCE

Advancement in cases of intestacy, see sections 411 to 415. *Post*, p. 1180.

SEC. 383. CONSTRUCTION OF PRIOR WILLS NOT AFFECTED.—The provisions of this chapter do not affect the construction of any will executed before it takes effect. Construction provisions not retroactive.

GENERAL PROVISIONS RELATING TO WILLS.

CHAPTER 25.—GENERAL PROVISIONS RELATING TO WILLS

Nature and designation of legacies.

SEC. 384. NATURE AND DESIGNATION OF LEGACIES.—Legacies are distinguished and designated, according to their nature, as follows:

Specific.

1. A legacy of a particular thing, specified and distinguished from all others of the same kind belonging to the testator, is specific; if such legacy fails, resort can not be had to the other property of the testator;

Demonstrative.

2. A legacy is demonstrative when the particular fund or personal property is pointed out from which it is to be taken or paid; if such fund or property fails, in whole or in part, resort may be had to the general assets, as in case of a general legacy;

Annuity.

3. An annuity is a bequest of certain specified sums periodically; if the fund or property out of which they are payable fails, resort may be had to the general assets, as in case of a general legacy;

Residuary.

4. A residuary legacy embraces only that which remains after all the bequests of the will are discharged;

General.

5. All other legacies are general legacies.

CROSS REFERENCE

Post, p. 1177.

Legacy and annuities, when due, see section 393.

Order of resort to estate for debts.

SEC. 385. ORDER OF RESORT TO ESTATE FOR DEBTS.—The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of debts, in the following order:

(1) The property which is expressly appropriated by the will for the payment of the debts;

(2) Property not disposed of by the will;

(3) Property which is devised or bequeathed to a residuary legatee;

(4) Property which is not specifically devised or bequeathed; and,

(5) All other property ratably. Before any debts are paid, the expenses of the administration and the allowance to the family must be paid or provided for.

Legacies.

SEC. 386. SAME FOR LEGACIES.—The property of a testator, except as otherwise specially provided in this code and the Code of Civil Procedure, must be resorted to for the payment of legacies, in the following order:

(1) The property which is expressly appropriated by the will for the payment of the legacies.

(2) Property not disposed of by the will.

(3) Property which is devised or bequeathed to a residuary legatee.

(4) Property which is specifically devised or bequeathed.

CROSS REFERENCE

Post, p. 1177.

Payment of legacies, when legacies are due, see section 395.

Legacies, how charged with debts.

SEC. 387. LEGACIES, HOW CHARGED WITH DEBTS.—Legacies to husband, widow, or kindred of any class are chargeable only after legacies to persons not related to the testator.

Abatement.

SEC. 388. ABATEMENT.—Abatement takes place in any class only as between legacies of that class, unless a different intention is expressed in the will.

Specific legacies.

SEC. 389. SPECIFIC LEGACIES.—In a specific legacy, the title passes by the will, but possession can only be obtained from the personal

representative; and he may be authorized by the district court to sell the property devised and bequeathed in the cases herein provided.

CROSS REFERENCE

How title passes in cases of intestacy, see section 402. *Post*, p. 1178.

Possession of legacies.

SEC. 390. POSSESSION OF LEGATEES.—Where specific legacies are for life only, the first legatee must sign and deliver to the second legatee, or, if there is none, to the personal representative, an inventory of the property, expressing that the same is in his custody for life only, and that, on his decease, it is to be delivered and to remain to the use and for the benefit of the second legatee, or to the personal representative, as the case may be.

Bequest of income, etc.

SEC. 391. BEQUEST OF INTEREST.—In case of a bequest of the interest or income of a certain sum or fund, the income accrues from the testator's death.

CROSS REFERENCES

Accumulations, see sections 224 et seq. *Ante*, p. 1156.
Annuities commence at testator's death, see section 393.

Satisfaction.

SEC. 392. SATISFACTION.—A legacy, or a gift in contemplation, fear, or peril of death, may be satisfied before death.

Legacies, when due.

SEC. 393. LEGACIES, WHEN DUE.—Legacies are due and deliverable at the expiration of one year after the testator's decease. Annuities commence at the testator's decease.

Interest on legacy.

SEC. 394. INTEREST.—Legacies bear interest from the time when they are due and payable, except that legacies for maintenance, or to the testator's widow, bear interest from the testator's decease.

Construction of rules.

SEC. 395. CONSTRUCTION OF THESE RULES.—Sections 391 to 394 are in all cases to be controlled by a testator's express intention.

CROSS REFERENCE

Intention of testator, see section 351. *Ante*, p. 1172.

Executor according to the tenor.

SEC. 396. EXECUTOR ACCORDING TO THE TENOR.—Where it appears, by the terms of a will, that it was the intention of the testator to commit the execution thereof and the administraion [1] of his estate to any person as executor, such person, although not named executor, is entitled to letters testamentary in like manner as if he had been named executor.

Power of executor to appoint invalid.

SEC. 397. POWER GIVEN EXECUTOR TO APPOINT IS INVALID.—An authority to an executor to appoint an executor is void.

Executor not to act until qualified.

SEC. 398. EXECUTOR NOT TO ACT TILL QUALIFIED.—No person has any power, as an executor, until he qualifies, except that, before letters have been issued, he may pay funeral charges and take necessary measures for the preservation of the estate.

CROSS REFERENCE

Payment of debts, see section 385. *Ante*, p. 1176.

Liability of beneficiaries for testator's obligations.

SEC. 399. LIABILITY OF BENEFICIARIES FOR TESTATOR'S OBLIGATIONS.—Those to whom property is given by will are liable for the obligations of the testator in the cases and to the extent prescribed by the Code of Civil Procedure.

[1] So in original.

SUCCESSION.

CHAPTER 26.—SUCCESSION

Defined.

SEC. 400. SUCCESSION DEFINED.—Succession is the coming in of another to take the property of one who dies without disposing of it by will.

Intestate's estate, to whom passes.

SEC. 401. INTESTATE'S ESTATE, TO WHOM PASSES.—The property of one who dies without disposing of it by will, passes to the heirs of the intestate, subject to the control of the district court, and to the possession of any administrator appointed by that court, for the purposes of administration.

Succession to and distribution of estate of deceased person.

SEC. 402. SUCCESSION TO AND DISTRIBUTION OF ESTATE OF DECEASED PERSON.—When any person having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, it is succeeded to and must be distributed, unless otherwise expressly provided in this code and the Code of Civil Procedure, subject to the payment of his debts, in the following manner:

When husband or wife and issue survive.

1. If the decedent leaves a surviving husband or wife, and only one child, or the lawful issue of one child, in equal shares to the surviving husband, or wife and child, or issue of such child. If the decedent leaves a surviving husband or wife, and more than one child living, or one child living and the lawful issue of one or more deceased children, one third to the surviving husband or wife, and the remainder in equal shares to his children and to the lawful issue of any deceased child, by right of representation; but if there is no child of decedent living at his death, the remainder goes to all of his lineal descendants; and if all of the descendants are in the same degree of kindred to the decedent, they share equally, otherwise they take according to the right of representation. If the decedent leaves no surviving husband or wife, but leaves issue, the whole estate goes to such issue; and if such issue consists of more than one child living, or one child living and the lawful issue of one or more deceased children, then the estate goes in equal shares to the children living, or to the child living and the issue of the deceased child or children by right of representation;

Surviving husband or wife but no issue.

2. If the decedent leaves no issue, the estate goes one half to the surviving husband or wife, and the other half to the decedent's father and mother in equal shares, and if either is dead the whole of said half goes to the other. If there is no father or mother, then one half goes in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister by right of representation. If the decedent leaves no issue, nor husband nor wife, the estate must go to his father and mother in equal shares, or if either is dead then to the other;

When property goes to brothers, sisters, etc.

3. If there is neither issue, husband, wife, father, nor mother then in equal shares to the brothers and sisters of decedent and to the children or grandchildren of any deceased brother or sister, by right of representation;

When whole estate to husband or wife.

4. If the decedent leaves a surviving husband or wife, and neither issue, father, mother, brother, sister, nor the children or grandchildren of a deceased brother or sister, the whole estate goes to the surviving husband or wife;

Next of kin.

5. If the decedent leaves neither issue, husband, wife, father, mother, brother, nor sister, the estate must go to the next of kin, in equal degree, excepting that, when there are two or more collateral kindred, in equal degree, but claiming through different ancestors, those who claim through the nearest ancestor must be preferred to those claiming through an ancestor more remote;

Interest of unmarried minor child, deceased.

6. If the decedent leaves several children, or one child and the issue of one or more children, and any such surviving child dies

under age and not having been married, all the estate that came to the deceased child by inheritance from such decedent descends in equal shares to the other children of the same parent and to the issue of any such other children who are dead by right of representation;

When all other children dead.

7. If, at the death of such child, who dies under age, not having been married, all the other children of his parents are also dead, and any of them has left issue, the estate that came to such child by inheritance from his parent descends to the issue of all other children of the same parent; and if all the issue are in the same degree of kindred to the child, they share the estate equally, otherwise they take according to the right of representation;

Distribution when deceased a widow or widower.

8. If the deceased is a widow, or widower, and leaves no issue, and the estate, or any portion thereof, was common property of such decedent and his or her deceased spouse, while such spouse was living, such property goes in equal shares to the children of such deceased spouse and to the descendants of such children by right of representation, and if none, then one half of such common property goes to the father and mother of such decedent in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such decedent and to the descendants of any deceased brother or sister by right of representation, and the other half goes to the father and mother of such deceased spouse in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such deceased spouse and to the descendants of any deceased brother or sister by right of representation.

When estate separate property of deceased spouse.

If the estate, or any portion thereof, was separate property of such deceased spouse, while living, and came to such decedent from such spouse by descent or bequest, such property goes in equal shares to the children of such spouse and to the descendants of any deceased child by right of representation, and if none, then to the father and mother of such spouse, in equal shares, or to the survivor of them if either be dead, or if both be dead, then in equal shares to the brothers and sisters of such spouse and to the descendants of any deceased brother or sister by right of representation.

Escheat, when no heirs.

9. If the decedent leaves no husband, wife, or kindred, and there are no heirs to take his estate or any portion thereof, under subdivision 8 of this section, the same escheats to the United States.

Illegitimate children as heirs.

SEC. 403. ILLEGITIMATE CHILDREN TO INHERIT IN CERTAIN EVENTS.—Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness, acknowledges himself to be the father of such child; and in all cases is an heir of his mother; and inherits his or her estate, in whole or in part, as the case may be, in the same manner as if he had been born in lawful wedlock, but he does not represent his father or mother by inheriting any part of the estate of his or her kindred, either lineal or collateral, unless, before his death, his parents shall have intermarried, and his father, after such marriage, acknowledges him as his child, or adopts him into his family; in which case such child and all the legitimate children are considered brothers and sisters, and on the death of either of them, intestate, and without issue, the others inherit his estate, and are heirs, as hereinbefore provided, in like manner as if all the children had been legitimate; saving to the father and mother, respectively, their rights in the estates of all the children in like manner as if all had been legitimate. The issue of all marriages null in law, or dissolved by divorce, are legitimate.

CROSS REFERENCES

Ante, p. 1145. Adoption of illegitimate child, see section 164.
Ante, p. 1129. Children of annulled marriage legitimate, see section 43.
Ante, p. 1137. Divorce not to affect legitimacy, see section 99.

Heirs of illegitimate child.

SEC. 404. SUCCESSION TO ILLEGITIMATE CHILD.—The estate of an illegitimate child, who, having title to any estate not otherwise limited by marriage contract, dies without disposing thereof by will, is succeeded to as if he had been born in lawful wedlock if he has been legitimated by a subsequent marriage of his parents, or adopted by his father as provided by section 164; otherwise, it is succeeded to as if he had been born in lawful wedlock and had survived his father and all persons related to him only through his father.

Computation of degrees of kindred.

SEC. 405. DEGREES OF KINDRED, HOW COMPUTED.—The degree of kindred is established by the number of generations, and each generation is called a degree.

Direct and collateral consanguinity.

SEC. 406. SAME; DIRECT AND COLLATERAL CONSANGUINITY.—The series of degrees forms the line; the series of degrees between persons who descend from one another is called direct or lineal consanguinity; and the series of degrees between persons who do not descend from one another, but spring from a common ancestor, is called the collateral line or collateral consanguinity.

Direct, descending and ascending.

SEC. 407. SAME; DIRECT LINE DESCENDING, AND DIRECT LINE ASCENDING.—The direct line is divided into a direct line descending and a direct line ascending. The first is that which connects the ancestors with those who descend from him. The second is that which connects a person with those from whom he descends.

Degrees in.

SEC. 408. SAME; DEGREES IN DIRECT LINE.—In the direct line there are as many degrees as there are generations. Thus, the son is, with regard to the father, in the first degree; the grandson in the second; and vice versa with regard to the father and grandfather toward the sons and grandsons.

Degrees in collateral line.

SEC. 409. SAME; DEGREES IN COLLATERAL LINE.—In the collateral line the degrees are counted by generations, from one of the relations up to the common ancestor, and from the common ancestor to the other relations. In such computation the decedent is excluded, the relative included, and the ancestor counted but once. Thus, brothers are related in the second degree; uncle and nephew in the third degree; cousins german in the fourth, and so on.

Relatives of the half blood.

SEC. 410. RELATIVES OF THE HALF BLOOD.—Kindred of the half blood inherit equally with those of the whole blood in the same degree, unless the inheritance come to the intestate by descent or gift of some one of his ancestors, in which case all those who are not of the blood of such ancestors must be excluded from such inheritance.

Advancements constitute part of distributive share.

SEC. 411. ADVANCEMENTS CONSTITUTE PART OF DISTRIBUTIVE SHARE.—Any estate given by the decedent in his lifetime as an advancement to any child, or other heir, is a part of the estate of the decedent for the purposes of division and distribution thereof among his heirs, and must be taken by such child, or other heir, toward his share of the estate of the decedent.

CROSS REFERENCE

Ante, pp. 1171, 1175. Advancements, see sections 347 and 382.

Advancements, sufficiency.

SEC. 412. ADVANCEMENTS, WHEN TOO MUCH, OR NOT ENOUGH.—If the amount of such advancement exceeds the share of the heir receiving the same, he must be excluded from any further portion in the division and distribution of the estate, but he must not be required to refund any part of such advancement; and if the amount so

received is less than his share, he is entitled to so much more as will give him his full share of the estate of the decedent.

What are.

SEC. 413. WHAT ARE ADVANCEMENTS.—All gifts and grants are made as advancements, if expressed in the gift or grant to be so made, or if charged in writing by the decedent as an advancement, or acknowledged in writing as such, by the child or other successor or heir.

Value of, how determined.

SEC. 414. VALUE OF ADVANCEMENTS, HOW DETERMINED.—If the value of the estate so advanced is expressed in the grant, or in the charge thereof made by the decedent, or in the acknowledgment of the party receiving it, it must be held as of that value in the division and distribution of the estate; otherwise, it must be estimated according to its value when given, as nearly as the same can be ascertained.

When heir, advanced to, predeceases decedent.

SEC. 415. WHEN HEIR, ADVANCED TO, DIES BEFORE DECEDENT.—If any child, or other heir receiving advancement, dies before the decedent, leaving heirs, the advancement must be taken into consideration in the division and distribution of the estate, and the amount thereof must be allowed accordingly by the representatives of the heirs receiving the advancement, in like manner as if the advancement had been made directly to them.

Inheritance of husband and wife from each other.

SEC. 416. INHERITANCE OF HUSBAND AND WIFE FROM EACH OTHER.—The provisions of the preceding sections of this chapter, as to the inheritance of the husband and wife from each other, apply only to the separate property of the decedents.

Community property on death of spouse.

SEC. 417. COMMUNITY PROPERTY ON DEATH OF SPOUSE.—Upon the death of either husband or wife, one half of the community property belongs to the surviving spouse; the other half is subject to the testamentary disposition of the decedent, and in the absence thereof goes to the surviving spouse, subject to the provisions of section 418.

Subject to administration.

SEC. 418. COMMUNITY PROPERTY SUBJECT TO ADMINISTRATION; EXCEPTION; HUSBAND'S CONTROL AFTER DEATH OF WIFE.—Community property passing from the control of the husband by reason of his death is subject to administration, his debts, family allowance, and the charges and expenses of administration: *Provided*, *however*, That the clothing of the decedent and the household effects not exceeding in value $2,500 shall go to the surviving wife without administration, and shall not be subject to the debts and allowance aforesaid.

Proviso.
Clothing, household effects, etc.

Control of husband after wife's death.

Community property passing from the control of the husband by virtue of testamentary disposition by the wife is subject to administration, his debts, and the charges and expenses of administration, but the husband, pending administration, shall retain the same power to sell, manage and deal with the community personal property as he had in her lifetime; and his possession and control of the community property shall not be transferred to the personal representative of the wife, except to the extent necessary to carry her will into effect.

CROSS REFERENCE

Community property, defined, see sections 119 and 202. *Ante*, pp. 1139, 1154.

Inheritance by representation.

SEC. 419. INHERITANCE BY REPRESENTATION.—Inheritance or succession " by right of representation " takes place when the descendants of any deceased heir take the same share or right in the estate of another person that their parents would have taken if living. Posthumous children are considered as living at the death of their parents.

Inheritance by aliens.

SEC. 420. ALIENS MAY INHERIT, WHEN, AND HOW.—Resident aliens may take in all cases by succession as citizens; and no person capable of succeeding under the provisions of this chapter is precluded from

such succession by reason of the alienage of any relative; but no nonresident foreigner can take by succession unless he appears and claims such succession within five years after the death of the decedent to whom he claims succession.

CROSS REFERENCES

Ante, p. 1153. See, also, section 191.

Ante, p. 1153. Time to claim succession, see section 192.

Escheat of property.

SEC. 421. ESCHEAT OF PROPERTY.—If a person dies owning any property situated in the Canal Zone and leaving no heir, next of kin, legatee, or other person entitled thereto, such property shall escheat to the United States. (Act Cong. Dec. 29, 1926, c. 19, § 17, 44 Stat. 930.)

Vol. 44, p. 930.

CROSS REFERENCE

Ante, p. 1179. See, also, section 402 (9).

Successor's liability for decedent's obligations.

SEC. 422. SUCCESSOR LIABLE FOR DECEDENT'S OBLIGATIONS.—Those who succeed to the property of a decedent are liable for his obligations in the cases and to the extent prescribed by the Code of Civil Procedure.

Person convicted of murder of decedent.

SEC. 423. PERSON CONVICTED OF MURDER OF DECEDENT NOT TO SUCCEED.—No person who has been convicted of the murder of the decedent shall be entitled to succeed to any portion of his estate; but the portion thereof to which he would otherwise be entitled to succeed descends to the other persons entitled thereto under the provisions of this chapter.

OBLIGATIONS IN GENERAL.

CHAPTER 27.—OBLIGATIONS IN GENERAL

DEFINITION OF OBLIGATIONS

Definition.

SEC. 424. OBLIGATION, WHAT.—An obligation is a legal duty, by which a person is bound to do or not to do a certain thing.

How created and enforced.

SEC. 425. HOW CREATED AND ENFORCED.—An obligation arises either from:

(1) The contract of the parties; or,

(2) The operation of law. An obligation arising from operation of law may be enforced in the manner provided by law, or by civil action or proceeding.

Interpretation of obligations.

INTERPRETATION OF OBLIGATIONS

GENERAL RULES OF INTERPRETATION

General rules.
Post, p. 1197.

SEC. 426. GENERAL RULES.—The rules which govern the interpretation of contracts are prescribed by chapter 30 of this code. Other obligations are interpreted by the same rules by which statutes of a similar nature are interpreted.

JOINT OR SEVERAL OBLIGATIONS

Joint, several, etc.

SEC. 427. OBLIGATIONS, JOINT OR SEVERAL, ETC.—An obligation imposed upon several persons, or a right created in favor of several persons, may be:

1. Joint;
2. Several; or,
3. Joint and several.

Joint.

SEC. 428. WHEN JOINT.—An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the

chapter on the interpretation of contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

CROSS REFERENCES

Promise joined in by several, all of whom receive some benefit, is presumed to be joint and several, see section 569. *Post*, p. 1200.

Promise in the singular, but executed by several, is presumed to be joint and several, see section 570. *Post*, p. 1200.

SEC. 429. CONTRIBUTION BETWEEN JOINT PARTIES.—A party to a joint, or joint and several obligation, who satisfies more than his share of the claim against all, may require a proportionate contribution from all the parties joined with him. Contribution between joint parties.

CROSS REFERENCE

Surety acquires rights of creditors, see section 1296. *Post*, p. 1295.

CONDITIONAL OBLIGATIONS Conditional obligations.

SEC. 430. OBLIGATION, WHEN CONDITIONAL.—An obligation is conditional, when the rights or duties of any party thereto depend upon the occurrence of an uncertain event. When conditional.

SEC. 431. CONDITIONS, KINDS OF.—Conditions may be precedent, concurrent, or subsequent. Kinds of.

CROSS REFERENCES

Conditional legacies, see sections 376 and 377. *Ante*, p. 1175.
Conditions concurrent, see section 433.
Conditions of ownership, see sections 217 et seq. *Ante*, p. 1155.
Conditions precedent, see section 432.
Condition subsequent, see section 434.

SEC. 432. CONDITION PRECEDENT.—A condition precedent is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed. Condition precedent.

CROSS REFERENCE

Conditions precedent, see sections 217 to 219, 377 and 466. *Ante*, pp. 1155, 1175; *post*, p. 1187.

SEC. 433. CONDITIONS CONCURRENT.—Conditions concurrent are those which are mutually dependent, and are to be performed at the same time. Conditions concurrent.

CROSS REFERENCE

Concurrent conditions, performance of, see section 466. *Post*, p. 1187.

SEC. 434. CONDITION SUBSEQUENT.—A condition subsequent is one referring to a future event, upon the happening of which the obligation becomes no longer binding upon the other party, if he chooses to avail himself of the condition. Condition subsequent.

CROSS REFERENCE

Conditions subsequent, see sections 218 and 380. *Ante*, pp. 1155, 1175.

SEC. 435. PERFORMANCE, ETC., OF CONDITIONS, WHEN ESSENTIAL.—Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself and must be able and offer to fulfill all conditions concurrent so imposed upon him on the like fulfillment by the other party, except as provided by section 436. Performance, etc., of conditions.

CROSS REFERENCES

Post, p. 1187. Concurrent or precedent conditions, performance of, see section 466.
Impossible conditions void, see section 437.

When excused.

SEC. 436. WHEN PERFORMANCE, ETC., EXCUSED.—If a party to an obligation gives notice to another, before the latter is in default, that he will not perform the same upon his part, and does not retract such notice before the time at which performance upon his part is due, such other party is entitled to enforce the obligation without previously performing or offering to perform any conditions upon his part in favor of the former party.

CROSS REFERENCES

Post, p. 1188. Excuse of performance, see section 474.
Post, p. 1189. Refusal to accept performance before the time to perform, see section 477.

Impossible and unlawful conditions void.

SEC. 437. IMPOSSIBLE OR UNLAWFUL CONDITIONS VOID.—A condition in a contract, the fulfillment of which is impossible or unlawful within the meaning of sections 520 to 524, or which is repugnant to the nature of the interest created by the contract, is void.

Post, p. 1195.

CROSS REFERENCES

Post, p. 1195. Conditions, when impossible, see sections 521 et seq.
Post, p. 1195. Object of contracts, see sections 520 et seq.
Ante, p. 1155. Unlawful conditions, see sections 219 et seq.

Conditions involving forfeiture.

SEC. 438. CONDITIONS INVOLVING FORFEITURE, HOW CONSTRUED.—A condition involving a forfeiture must be strictly interpreted against the party for whose benefit it is created.

Alternative obligations.

ALTERNATIVE OBLIGATIONS

Right of selection.

SEC. 439. WHO HAS THE RIGHT OF SELECTION.—If an obligation requires the performance of one of two acts, in the alternative, the party required to perform has the right of selection, unless it is otherwise provided by the terms of the obligation.

How lost.

SEC. 440. RIGHT OF SELECTION, HOW LOST.—If the party having the right of selection between alternative acts does not give notice of his selection to the other party within the time, if any, fixed by the obligation for that purpose, or, if none is so fixed, before the time at which the obligation ought to be performed, the right of selection passes to the other party.

Alternatives indivisible.

SEC. 441. ALTERNATIVES INDIVISIBLE.—The party having the right of selection between alternative acts must select one of them in its entirety, and can not select part of one and part of another without the consent of the other party.

When one alternative void.

SEC. 442. NULLITY OF ONE OR MORE OF ALTERNATIVE OBLIGATIONS.—If one of the alternative acts required by an obligation is such as the law will not enforce, or becomes unlawful, or impossible of performance, the obligation is to be interpreted as though the other stood alone.

Transfer of obligations.

TRANSFER OF OBLIGATIONS

Burden of obligation not transferable.

SEC. 443. BURDEN OF OBLIGATION NOT TRANSFERABLE.—The burden of an obligation may be transferred with the consent of the party entitled to its benefit, but not otherwise.

Rights arising out of, transferable.

SEC. 444. RIGHTS ARISING OUT OF OBLIGATION TRANSFERABLE.—A right arising out of an obligation is the property of the person to whom it is due, and may be transferred as such.

CROSS REFERENCES

Assignment of things in action, see section 239. *Ante*, p. 1158.
Incidents following things transferred, see section 280. *Ante*, p. 1163.
Literary property is assignable, see section 242. *Ante*, p. 1159.
Mere possibility can not be transferred, see section 262. *Ante*, p. 1161.
Nonnegotiable instrument transferable by indorsement, see section 445.
Products of the mind, assignment of, see section 240. *Ante*, p. 1158.
Property of any kind may be transferred, see section 261. *Ante*, p. 1161.

Nonnegotiable instruments may be transferred.

SEC. 445. NONNEGOTIABLE INSTRUMENTS MAY BE TRANSFERRED.—A nonnegotiable written contract for the payment of money or personal property may be transferred by indorsement, in like manner with negotiable instruments. Such indorsement shall transfer all the rights of the assignor under the instrument to the assignee, subject to all equities and defenses existing in favor of the maker at the time of the indorsement.

Extinction of obligations.

EXTINCTION OF OBLIGATIONS

PERFORMANCE

By performance.

SEC. 446. OBLIGATION EXTINGUISHED BY PERFORMANCE.—Full performance of an obligation, by the party whose duty it is to perform it, or by any other person on his behalf, and with his assent, if accepted by the creditor, extinguishes it.

By one of several joint debtors.

SEC. 447. PERFORMANCE BY ONE OF SEVERAL JOINT DEBTORS.—Performance of an obligation by one of several persons who are jointly liable under it extinguishes the liability of all.

To one of joint creditors.

SEC. 448. PERFORMANCE TO ONE OF JOINT CREDITORS.—An obligation in favor of joint creditors is extinguished by performance rendered to any of them, except in the case of a deposit made by joint owners, which is regulated by chapters 36 to 38 of this code on deposit. *Post*, pp. 1226–1242.

CROSS REFERENCE

Performance to one of joint creditors, see section 711. *Post*, p. 1227.

Effect of directions by creditors.

SEC. 449. EFFECT OF DIRECTIONS BY CREDITORS.—If a creditor, or any one of two or more joint creditors, at any time directs the debtor to perform his obligation in a particular manner, the obligation is extinguished by performance in that manner, even though the creditor does not receive the benefit of such performance.

Part performance.

SEC. 450. PARTIAL PERFORMANCE.—A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor can not avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

CROSS REFERENCE

Effect of part performance, see sections 454, 481, and 1281. *Post*, pp. 1186, 1189, 1293.

"Payment," defined.

SEC. 451. PAYMENT, WHAT.—Performance of an obligation for the delivery of money only is called payment.

CROSS REFERENCE

Tender, effect of, see sections 468 and 472. *Post*, p. 1188.

Application of general performance.

SEC. 452. APPLICATION OF GENERAL PERFORMANCE.—Where a debtor, under several obligations to another, does an act, by way of perform-

ance, in whole or in part, which is equally applicable to two or more of such obligations, such performance must be applied as follows:

(1) If, at the time of performance, the intention or desire of the debtor that such performance should be applied to the extinction of any particular obligation, be manifested to the creditor, it must be so applied.

(2) If no such application be then made, the creditor, within a reasonable time after such performance, may apply it toward the extinction of any obligation, performance of which was due to him from the debtor at the time of such performance; except that if similar obligations were due to him both individually and as a trustee, he must, unless otherwise directed by the debtor, apply the performance to the extinction of all such obligations in equal proportion; and an application once made by the creditor can not be rescinded without the consent of the debtor.

(3) If neither party makes such application within the time prescribed herein, the performance must be applied to the extinction of obligations in the following order; and, if there be more than one obligation of a particular class, to the extinction of all in that class, ratably:

1. Of interest due at the time of the performance.
2. Of principal due at that time.
3. Of the obligation earliest in date of maturity.
4. Of an obligation not secured by a lien or collateral undertaking.
5. Of an obligation secured by a lien or collateral undertaking.

Offer of performance.

OFFER OF PERFORMANCE

Obligation extinguished by.

SEC. 453. OBLIGATION EXTINGUISHED BY OFFER OF PERFORMANCE.—An obligation is extinguished by an offer of performance, made in conformity to the rules herein prescribed, and with intent to extinguish the obligation.

CROSS REFERENCES

By whom offer may be made, see section 455.

Post, p. 1188. Duties of person making tender, see section 471.

Post, p. 1188. Tender of payment, see sections 468 and 472.

Post, p. 1188. Tender of article passes title, see sections 470 and 472.

Offer of partial performance.

SEC. 454. OFFER OF PARTIAL PERFORMANCE.—An offer of partial performance is of no effect.

CROSS REFERENCE

Ante, p. 1185; *post*, pp. 1189, 1293. Part performance, effect of, see sections 450, 481, and 1281.

By whom made.

SEC. 455. BY WHOM TO BE MADE.—An offer of performance must be made by the debtor, or by some person on his behalf and with his assent.

To whom made.

SEC. 456. TO WHOM TO BE MADE.—An offer of performance must be made to the creditor, or to any one of two or more joint creditors, or to a person authorized by one or more of them to receive or collect what is due under the obligation, if such creditor or authorized person is present at the place where the offer may be made; and if not, wherever the creditor may be found.

CROSS REFERENCE

Post, p. 1187. Where offer may be made, see section 457.

Where offer may be made.

SEC. 457. WHERE OFFER MAY BE MADE.—In the absence of an express provision to the contrary, an offer of performance may be made, at the option of the debtor:

1. At any place appointed by the creditor; or,

2. Wherever the person to whom the offer ought to be made can be found; or,

3. If such person can not with reasonable diligence, be found within the Canal Zone, and within a reasonable distance from his residence or place of business, of [1] if he evades the debtor, then at his residence or place of business, if the same can, with reasonable diligence, be found within the Canal Zone; or

4. If this can not be done, then at any place within the Canal Zone.

When offer must be made.

SEC. 458. WHEN OFFER MUST BE MADE.—Where an obligation fixes a time for its performance, an offer of performance must be made at that time, within reasonable hours, and not before nor afterwards.

SEC. 459. SAME.—Where an obligation does not fix the time for its performance, an offer of performance may be made at any time before the debtor, upon a reasonable demand, has refused to perform.

Compensation after delay in performance.

SEC. 460. COMPENSATION AFTER DELAY IN PERFORMANCE.—Where delay in performance is capable of exact and entire compensation, and time has not been expressly declared to be of the essence of the obligation, an offer of performance, accompanied with an offer of such compensation, may be made at any time after it is due, but without prejudice to any rights acquired by the creditor, or by any other person, in the meantime.

Offer to be made in good faith.

SEC. 461. OFFER TO BE MADE IN GOOD FAITH.—An offer of performance must be made in good faith, and in such manner as is most likely, under the circumstances, to benefit the creditor.

Conditional offer.

SEC. 462. CONDITIONAL OFFER.—An offer of performance must be free from any conditions which the creditor is not bound, on his part, to perform.

CROSS REFERENCE

Offer of performance upon condition, see sections 466 and 467.

Ability and willingness.

SEC. 463. ABILITY AND WILLINGNESS ESSENTIAL.—An offer of performance is of no effect if the person making it is not able and willing to perform according to the offer.

Production of thing to be delivered.

SEC. 464. PRODUCTION OF THING TO BE DELIVERED NOT NECESSARY.—The thing to be delivered, if any, need not in any case be actually produced, upon an offer of performance, unless the offer is accepted.

Thing offered to be kept separate.

SEC. 465. THING OFFERED TO BE KEPT SEPARATE.—A thing, when offered by way of performance, must not be mixed with other things from which it can not be separated immediately and without difficulty.

CROSS REFERENCE

Custody of thing offered, see section 471. *Post*, p. 1188.

Performance of condition precedent.

SEC. 466. PERFORMANCE OF CONDITION PRECEDENT.—When a debtor is entitled to the performance of a condition precedent to, or concurrent with, performance on his part, he may make his offer to depend upon the due performance of such condition.

CROSS REFERENCES

Conditions precedent defined, see sections 218, 377, and 432. *Ante*, pp. 1155, 1175, 1183.

Conditions subsequent defined, see sections 218, 380, and 434. *Ante*, pp. 1155, 1175, 1183.

Performance of conditions, see section 435. *Ante*, p. 1183.

Unlawful and impossible conditions void, see sections 219 and 437. *Ante*, pp. 1155, 1184.

[1] So in original.

Written receipts.

SEC. 467. WRITTEN RECEIPTS.—A debtor has a right to require from his creditor a written receipt for any property delivered in performance of his obligation.

Extinction of pecuniary obligation.

SEC. 468. EXTINCTION OF PECUNIARY OBLIGATION.—An obligation for the payment of money is extinguished by a due offer of payment, if the amount is immediately deposited in the name of the creditor, with some bank of deposit within the Canal Zone, of good repute, and notice thereof is given to the creditor.

CROSS REFERENCE

Tender stopping interest, see section 472.

Objection to mode of offer.

SEC. 469. OBJECTIONS TO MODE OF OFFER.—All objections to the mode of an offer of performance, which the creditor has an opportunity to state at the time to the person making the offer, and which could be then obviated by him, are waived by the creditor, if not then stated.

Title to thing offered.

SEC. 470. TITLE TO THING OFFERED.—The title to a thing duly offered in performance of an obligation passes to the creditor, if the debtor at the time signifies his intention to that effect.

Custody of.

SEC. 471. CUSTODY OF THING OFFERED.—The person offering a thing, other than money, by way of performance, must, if he means to treat it as belonging to the creditor, retain it as a depositary for hire, until the creditor accepts it, or until he has given reasonable notice to the creditor that he will retain it no longer, and, if with reasonable diligence he can find a suitable depositary therefor, until he has deposited it with such person.

CROSS REFERENCES

Post, p. 1229. Depositary for hire, see section 725.

Ante, p. 1187. Thing offered to be kept separate, see section 465.

Effect of offer on accessories of obligations.

SEC. 472. EFFECT OF OFFER ON ACCESSORIES OF OBLIGATION.—An offer of payment or other performance, duly made, though the title to the thing offered be not transferred to the creditor, stops the running of interest on the obligation, and has the same effect upon all its incidents as a performance thereof.

CROSS REFERENCE

Tender transfers title, see section 470.

Creditor's retention of thing which he refuses to accept.

SEC. 473. CREDITOR'S RETENTION OF THING WHICH HE REFUSES TO ACCEPT.—If anything is given to a creditor by way of performance, which he refuses to accept as such, he is not bound to return it without demand; but if he retains it, he is a gratuitous depositary thereof.

CROSS REFERENCE

Post, p. 1229. Gratuitous depositary, see sections 720 et seq.

Prevention of performance or offer.

PREVENTION OF PERFORMANCE OR OFFER

What excuses performance, etc.

SEC. 474. WHAT EXCUSES PERFORMANCE, ETC.—The want of performance of an obligation, or of an offer of performance, in whole or in part, or any delay therein, is excused by the following causes, to the extent to which they operate:

1. When such performance or offer is prevented or delayed by the act of the creditor, or by the operation of law, even though there may have been a stipulation that this shall not be an excuse;

2. When it is prevented or delayed by an irresistible, super-human cause, or by the act of public enemies of the United States, unless the parties have expressly agreed to the contrary; or,

3. When the debtor is induced not to make it, by any act of the creditor intended or naturally tending to have that effect, done at or before the time at which such performance or offer may be made, and not rescinded before that time.

CROSS REFERENCE

Excuse of performance, see section 436. *Ante*, p. 1184.

Effect of prevention of performance.

SEC. 475. EFFECT OF PREVENTION OF PERFORMANCE.—If the performance of an obligation be prevented by the creditor, the debtor is entitled to all the benefits which he would have obtained if it had been performed by both parties.

SEC. 476. SAME.—If performance of an obligation is prevented by any cause excusing performance, other than the act of the creditor, the debtor is entitled to a ratable proportion of the consideration to which he would have been entitled upon full performance, according to the benefit which the creditor receives from the actual performance.

Refusal to accept, before offer.

SEC. 477. EFFECT OF REFUSAL TO ACCEPT PERFORMANCE BEFORE OFFER.—A refusal by a creditor to accept performance, made before an offer thereof, is equivalent to an offer and refusal, unless, before performance is actually due, he gives notice to the debtor of his willingness to accept it.

CROSS REFERENCE

Refusal to perform entitles the other party to enforce the obligation, without performance on his part, see section 436. *Ante*, p. 1184.

ACCORD AND SATISFACTION

Accord and satisfaction.

"Accord."

SEC. 478. ACCORD, WHAT.—An accord is an agreement to accept, in extinction of an obligation, something different from or less than that to which the person agreeing to accept is entitled.

CROSS REFERENCES

Order on third person, effect of, see section 485. *Post*, p. 1190.

Release of obligations, see sections 486 et seq. *Post*, p. 1190.

Substituting new obligation for existing one is novation, see sections 482 et seq. *Post*, p. 1190.

Effect of.

SEC. 479. EFFECT OF ACCORD.—Though the parties to an accord are bound to execute it, yet it does not extinguish the obligation until it is fully executed.

"Satisfaction."

SEC. 480. SATISFACTION, WHAT.—Acceptance, by the creditor, of the consideration of an accord extinguishes the obligation, and is called satisfaction.

CROSS REFERENCE

Part performance, see section 481.

Part performance.

SEC. 481. PART PERFORMANCE.—Part performance of an obligation, either before or after a breach thereof, when expressly accepted by the creditor in writing, in satisfaction, or rendered in pursuance of an agreement in writing for that purpose, though without any new consideration, extinguishes the obligation.

CROSS REFERENCE

Ante, pp. 1185, 1186; *post*, p. 1293. Part performance, see section 450, 454, and 1281.

NOVATION

Novation.

SEC. 482. NOVATION, WHAT.—Novation is the substitution of a new obligation for an existing one.

CROSS REFERENCES

Novation a contract, see section 484.

Post, p. 1191. Right to sue on contract made for one's benefit, see section 494.

Modes of.

SEC. 483. MODES OF NOVATION.—Novation is made:

1. By the substitution of a new obligation between the same parties, with intent to extinguish the old obligation;

2. By the substitution of a new debtor in place of the old one, with intent to release the latter; or,

3. By the substitution of a new creditor in place of the old one, with intent to transfer the rights of the latter to the former.

Novation a contract.

SEC. 484. NOVATION A CONTRACT.—Novation is made by contract, and is subject to all the rules concerning contracts in general.

Rescission of.

SEC. 485. RESCISSION OF NOVATION.—When the obligation of a third person, or an order upon such person is accepted in satisfaction, the creditor may rescind such acceptance if the debtor prevents such person from complying with the order, or from fulfilling the obligation; or if, at the time the obligation or order is received, such person is insolvent, and this fact is unknown to the creditor, or if, before the creditor can with reasonable diligence present the order to the person upon whom it is given, he becomes insolvent.

Release.

RELEASE

Obligation extinguished by.

SEC. 486. OBLIGATION EXTINGUISHED BY RELEASE.—An obligation is extinguished by a release therefrom given to the debtor by the creditor, upon a new consideration, or in writing, with or without new consideration.

CROSS REFERENCE

Post, p. 1196. Writing imports a consideration, see section 534.

General release, claims not affected by.

SEC. 487. CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE.—A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Release of one of several joint debtors.

SEC. 488. RELEASE OF ONE OF SEVERAL JOINT DEBTORS.—A release of one of two or more joint debtors does not extinguish the obligations of any of the others, unless they are mere guarantors; nor does it affect their right to contribution from him.

CROSS REFERENCES

Post, p. 1293. Guarantor's liability discharged by what dealings with debtor, see section 1278.

Post, p. 1295. Rights of sureties, see section 1292.

CHAPTER 28.—NATURE OF A CONTRACT

NATURE OF A CONTRACT.

DEFINITION

"Contract."

SEC. 489. CONTRACT, WHAT.—A contract is an agreement to do or not to do a certain thing.

CROSS REFERENCES

Object of a contract, see section 520 et seq. *Post*, p. 1195.
Parties to a contract, see section 491 et seq.

Elements of.

SEC. 490. ESSENTIAL ELEMENTS OF CONTRACT.—It is essential to the existence of a contract that there should be:
1. Parties capable of contracting;
2. Their consent;
3. A lawful object; and,
4. A sufficient cause or consideration.

CROSS REFERENCES

Consent, see sections 495 et seq.
Consideration, see sections 525 et seq. *Post*, p. 1195.
Requisites of object, see section 521. *Post*, p. 1195.
Unlawful contracts, see section 572. *Post*, p. 1200.

PARTIES

Parties.

Capacity.

SEC. 491. WHO MAY CONTRACT.—All persons are capable of contracting, except minors and persons of unsound mind.

CROSS REFERENCES

Contracts of infants, see sections 19 et seq., and 598. *Ante*, p. 1126; *post*, p. 1204.
Contracts of married women, see sections 113, 114, and 122. *Ante*, pp. 1139, 1140.
Contracts of persons of unsound mind, see sections 24 et seq. *Ante*, p. 1126.

Minors, etc.

SEC. 492. MINORS, ETC. Minors and persons of unsound mind, have only such capacity as is defined by chapter 2 of this code.

CROSS REFERENCE

Powers of minors, see sections 19 et seq. *Ante*, p. 1126.

Identification of parties.

SEC. 493. IDENTIFICATION OF PARTIES NECESSARY.—It is essential to the validity of a contract, not only that the parties should exist, but that it should be possible to identify them.

Enforcement of contract for benefit of third person.

SEC. 494. WHEN CONTRACT FOR BENEFIT OF THIRD PERSON MAY BE ENFORCED.—A contract, made expressly for the benefit of a third person, may be enforced by him at any time before the parties thereto rescind it.

CONSENT

Consent.

Essentials.

SEC. 495. ESSENTIALS OF CONSENT.—The consent of the parties to a contract must be:
1. Free;
2. Mutual; and,
3. Communicated by each to the other.

CROSS REFERENCES

Consent, when not free, and effect, see sections 496 and 497. *Post*, p. 1192.
Consent, when not mutual, see section 510. *Post*, p. 1194.
Consent, how communicated, see sections 511 et seq. *Post*, p. 1194.

Consent, when voidable.

SEC. 496. CONSENT, WHEN VOIDABLE.—A consent which is not free is nevertheless not absolutely void, but may be rescinded by the parties, in the manner prescribed by sections 580 to 583.

CROSS REFERENCE

Post, pp. 1201, 1337. Rescission of contracts, see sections 580 et seq., and 1645 et seq.

Apparent consent.

SEC. 497. APPARENT CONSENT, WHEN NOT FREE.—An apparent consent is not real or free when obtained through:

1. Duress;
2. Menace;
3. Fraud;
4. Undue influence; or,
5. Mistake.

CROSS REFERENCES

Duress, defined, see section 499.

Menace, defined, see section 500.

Fraud, defined, see section 501.

Post, p. 1193. Undue influence, defined, see section 505.

Post, p. 1193. Mistake, defined, see sections 506 and 507.

Post, p. 1201. Recission, where consent obtained by mistake, duress, menace, fraud, or undue influence, see section 581.

When deemed to have been obtained by fraud, etc.

SEC. 498. WHEN DEEMED TO HAVE BEEN OBTAINED BY FRAUD, AND SO FORTH.—Consent is deemed to have been obtained through one of the causes mentioned in section 497 only when it would not have been given had such cause not existed.

"Duress."

SEC. 499. DURESS, WHAT.—Duress consists in:

1. Unlawful confinement of the person of the party, or of the husband or wife of such party, or of an ancestor, descendant, or adopted child of such party, husband, or wife;

2. Unlawful detention of the property of any such person; or

3. Confinement of such person, lawful in form, but fraudulently obtained, or fraudulently made unjustly harassing or oppressive.

CROSS REFERENCE

Post, p. 1201. Rescission of contract for duress, see section 581.

"Menace."

SEC. 500. MENACE, WHAT.—Menace consists in a threat:

1. Of such duress as is specified in subdivisions one and three of section 499;

2. Of unlawful and violent injury to the person or property of any such person as is specified in section 499; or,

3. Of injury to the character of any such person.

CROSS REFERENCE

Post, p. 1201. Rescission of contract for menace, see section 581.

Fraud, actual or constructive.

SEC. 501. FRAUD, ACTUAL OR CONSTRUCTIVE.—Fraud is either actual or constructive.

CROSS REFERENCE

Post, p. 1201. Rescission of contract for fraud, see section 581.

"Actual fraud."

SEC. 502. ACTUAL FRAUD, WHAT.—Actual fraud, within the meaning of this subchapter, consists in any of the following acts, committed by a party to the contract, or with his connivance, with intent to deceive another party thereto, or to induce him to enter into the contract:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
3. The suppression of that which is true, by one having knowledge or belief of the fact;
4. A promise made without any intention of performing it; or,
5. Any other act fitted to deceive.

CROSS REFERENCES

Deceit, see sections 590 and 591. *Post*, p. 1203.
Fraudulent instruments and transfers, see sections 1659 et seq. *Post*, p. 1338.
Rescission of contracts for fraud, see section 581. *Post*, p. 1201.

"Constructive fraud."

SEC. 503. CONSTRUCTIVE FRAUD.—Constructive fraud consists:
1. In any breach of duty which, without an actually fraudulent intent, gains an advantage to the person in fault, or any one claiming under him, by misleading another to his prejudice, or to the prejudice of any one claiming under him; or,
2. In any such act or omission as the law specially declares to be fraudulent, without respect to actual fraud.

CROSS REFERENCE

Recission of contract for fraud, see section 581. *Post*, p. 1201.

Actual fraud a question of fact.

SEC. 504. ACTUAL FRAUD A QUESTION OF FACT.—Actual fraud is always a question of fact.

"Undue influence."

SEC. 505. UNDUE INFLUENCE, WHAT.—Undue influence consists:
1. In the use, by one in whom a confidence is reposed by another, or who holds a real or apparent authority over him, of such confidence or authority for the purpose of obtaining an unfair advantage over him;
2. In taking an unfair advantage of another's weakness of mind; or,
3. In taking a grossly oppressive and unfair advantage of another's necessities or distress.

CROSS REFERENCES

Rescission of contracts see sections 581 and 1645. *Post*, pp. 1201, 1337.
Undue influence vitiating will, see section 312. *Ante*, p. 1167.

"Mistake."

SEC. 506. MISTAKE, WHAT.—Mistake may be either of fact or law.

Mistake of fact.

SEC. 507. MISTAKE OF FACT.—Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:
1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,
2. Belief in the present existence of a thing material to the contract which does not exist, or in the past existence of such a thing, which has not existed.

CROSS REFERENCE

Rescission of contract for mistake, see section 581. *Post*, p. 1201.

Mistake of law.

SEC. 508. MISTAKE OF LAW.—Mistake of law constitutes a mistake, within the meaning of this subchapter, only when it arises from:
1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,
2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

CROSS REFERENCE

Post, p. 1201. Rescission of contract for mistake, see section 581.

Mistake of foreign laws.

SEC. 509. MISTAKE OF FOREIGN LAWS.—Mistake of foreign laws is a mistake of fact.

Mutuality of consent.

SEC. 510. MUTUALITY OF CONSENT.—Consent is not mutual, unless the parties all agree upon the same thing in the same sense. But in certain cases defined by the chapter on interpretation, they are to be deemed so to agree without regard to the fact.

CROSS REFERENCE

Post, p. 1197. Interpretation of contracts, see sections 546 et seq.

Communication of consent.

SEC. 511. COMMUNICATION OF CONSENT.—Consent can be communicated with effect, only by some act or omission of the party contracting, by which he intends to communicate it, or which necessarily tends to such communication.

Mode of communicating acceptance.

SEC. 512. MODE OF COMMUNICATING ACCEPTANCE OF PROPOSAL.—If a proposal prescribes any conditions concerning the communication of its acceptance, the proposer is not bound unless they are conformed to; but in other cases any reasonable and usual mode may be adopted.

When communication deemed complete.

SEC. 513. WHEN COMMUNICATION DEEMED COMPLETE.—Consent is deemed to be fully communicated between the parties as soon as the party accepting a proposal has put his acceptance in the course of transmission to the proposer, in conformity to section 512.

Acceptance by performance.

SEC. 514. ACCEPTANCE BY PERFORMANCE OF CONDITIONS.—Performance of the conditions of a proposal, or the acceptance of the consideration offered with a proposal, is an acceptance of the proposal.

Acceptance must be absolute.

SEC. 515. ACCEPTANCE MUST BE ABSOLUTE.—An acceptance must be absolute and unqualified, or must include in itself an acceptance of that character which the proposer can separate from the rest, and which will conclude the person accepting. A qualified acceptance is a new proposal.

Revocation of proposal.

SEC. 516. REVOCATION OF PROPOSAL.—A proposal may be revoked at any time before its acceptance is communicated to the proposer, but not afterwards.

How made.

SEC. 517. REVOCATION, HOW MADE.—A proposal is revoked:

1. By communication of notice of revocation by the proposer to the other party, in the manner prescribed by sections 511 and 513, before his acceptance has been communicated to the former;

2. By the lapse of the time prescribed in such proposal for its acceptance, or if no time is so prescribed, the lapse of a reasonable time without communication of the acceptance;

3. By the failure of the acceptor to fulfill a condition precedent to acceptance; or,

4. By the death or insanity of the proposer.

Ratification of contract void for want of consent.

SEC. 518. RATIFICATION OF CONTRACT VOID FOR WANT OF CONSENT.—A contract which is voidable solely for want of due consent, may be ratified by a subsequent consent.

Assumption of obligation by acceptance of benefits.

SEC. 519. ASSUMPTION OF OBLIGATION BY ACCEPTANCE OF BENEFITS.—A voluntary acceptance of the benefit of a transaction is equivalent to a consent to all the obligations arising from it, so far as the facts are known, or ought to be known, to the person accepting.

CROSS REFERENCE

Post, p. 1346. He who takes benefit must bear burden, see section 1709.

OBJECT

Object.

SEC. 520. OBJECT, WHAT.—The object of a contract is the thing which it is agreed, on the part of the party receiving the consideration, to do or not to do.

Defined.

CROSS REFERENCES

Unlawful conditions, see section 437. *Ante*, p. 1184.
Unlawful contracts, see sections 521 and 572 et seq. *Post*, p. 1200.

SEC. 521. REQUISITES OF OBJECT.—The object of a contract must be lawful when the contract is made, and possible and ascertainable by the time the contract is to be performed.

Requisites.

CROSS REFERENCES

Essential elements of contract, see section 490. *Ante*, p. 1191.
Unlawful contracts, see sections 572 et seq. *Post*, p. 1200.

SEC. 522. IMPOSSIBILITY, WHAT.—Everything is deemed possible except that which is impossible in the nature of things.

"Impossibility," defined.

SEC. 523. WHEN CONTRACT WHOLLY VOID.—Where a contract has but a single object, and such object is unlawful, whether in whole or in part, or wholly impossible of performance, or so vaguely expressed as to be wholly unascertainable, the entire contract is void.

When contract wholly void.

CROSS REFERENCE

Consideration illegal in part, see sections 524 and 528.

SEC. 524. WHEN CONTRACT PARTIALLY VOID.—Where a contract has several distinct objects, of which one at least is lawful, and one at least is unlawful, in whole or in part, the contract is void as to the latter and valid as to the rest.

When contract partially void.

CROSS REFERENCES

Contract illegal in part, see section 528.
Provision in, impossible of performance, effect of, see section 533. *Post*, p. 1196.

CONSIDERATION

Consideration.

SEC. 525. GOOD CONSIDERATION, WHAT.—Any benefit conferred, or agreed to be conferred, upon the promisor, by any other person, to which the promisor is not lawfully entitled, or any prejudice suffered, or agreed to be suffered, by such person, other than such as he is at the time of consent lawfully bound to suffer, as an inducement to the promisor, is a good consideration for a promise.

Good consideration.

SEC. 526. HOW FAR LEGAL OR MORAL OBLIGATION IS A GOOD CONSIDERATION.—An existing legal obligation resting upon the promisor, or a moral obligation originating in some benefit conferred upon the promisor, or prejudice suffered by the promisee, is also a good consideration for a promise, to an extent corresponding with the extent of the obligation, but no further or otherwise.

Legal or moral obligation as good consideration.

SEC. 527. CONSIDERATION LAWFUL.—The consideration of a contract must be lawful within the meaning of section 572.

Unlawful consideration.

CROSS REFERENCE

Unlawful contracts, see sections 572 et seq. *Post*, p. 1200.

SEC. 528. EFFECT OF ITS ILLEGALITY.—If any part of a single consideration for one or more objects, or of several considerations for a single object, is unlawful, the entire contract is void.

Effect of illegality.

CROSS REFERENCE

Ante, p. 1195. Consideration illegal in part, see sections 523 and 524.

Consideration executed or executory.

SEC. 529. CONSIDERATION EXECUTED OR EXECUTORY.—A consideration may be executed or executory, in whole or in part. In so far as it is executory it is subject to the provisions of sections 520 to 524.

Executory.

SEC. 530. EXECUTORY CONSIDERATION.—When a consideration is executory, it is not indispensable that the contract should specify its amount or the means of ascertaining it. It may be left to the decision of a third person, or regulated by any specified standard.

How ascertained.

SEC. 531. HOW ASCERTAINED.—When a contract does not determine the amount of the consideration, nor the method by which it is to be ascertained, or when it leaves the amount thereof to the discretion of an interested party, the consideration must be so much money as the object of the contract is reasonably worth.

Effect of impossibility of ascertaining consideration.

SEC. 532. EFFECT OF IMPOSSIBILITY OF ASCERTAINING CONSIDERATION.—Where a contract provides an exclusive method by which its consideration is to be ascertained, which method is on its face impossible of execution, the entire contract is void.

SEC. 533. SAME.—Where a contract provides an exclusive method by which its consideration is to be ascertained, which method appears possible on its face, but in fact is, or becomes, impossible of execution, such provision only is void.

CROSS REFERENCE

Ante, p. 1195. Effect of partial invalidity of contract, see section 524.

Written instrument presumptive evidence of consideration.

SEC. 534. WRITTEN INSTRUMENT PRESUMPTIVE EVIDENCE OF CONSIDERATION.—A written instrument is presumptive evidence of a consideration.

CROSS REFERENCES

Post, p. 1197. Distinction between sealed and unsealed instruments abolished, see section 545.

Post, p. 1311. Presumption of consideration for negotiable instrument, see section 1423.

Burden of proof to invalidate.

SEC. 535. BURDEN OF PROOF TO INVALIDATE SUFFICIENT CONSIDERATION.—The burden of showing a want of consideration sufficient to support an instrument lies with the party seeking to invalidate or avoid it.

MANNER OF CREATING CONTRACTS.

CHAPTER 29.—MANNER OF CREATING CONTRACTS

Contract, express or implied.

SEC. 536. CONTRACTS, EXPRESS OF IMPLIED.—A contract is either express or implied.

Express contract.

SEC. 537. EXPRESS CONTRACTS, WHAT.—An express contract is one the terms of which are stated in words.

Implied contract.

SEC. 538. IMPLIED CONTRACT, WHAT.—An implied contract is one the existence and terms of which are manifested by conduct.

CROSS REFERENCE

Post, p. 1203. Obligations imposed by law, see sections 589 et seq.

Oral contracts.

SEC. 539. WHAT CONTRACTS MAY BE ORAL.—All contracts may be oral, except such as are specially required by statute to be in writing.

CROSS REFERENCE

Post, p. 1204. Contracts when to be in writing, see sections 540, 541, and 600.

Contracts not in writing, through fraud.

SEC. 540. CONTRACT NOT IN WRITING THROUGH FRAUD, MAY BE ENFORCED AGAINST FRAUDULENT PARTY.—Where a contract, which is

required by law to be in writing, is prevented from being put into writing by the fraud of a party thereto, any other party who is by such fraud led to believe that it is in writing, and acts upon such belief to his prejudice, may enforce it against the fraudulent party.

Written contracts.

SEC. 541. WHAT CONTRACTS MUST BE WRITTEN.—The following contracts are invalid, unless the same, or some note or memorandum thereof, is in writing and subscribed to by the party to be charged, or by his agent:

1. An agreement that by its terms is not to be performed within a year from the making thereof;

2. A special promise to answer for the debt, default, or miscarriage of another, except in the cases provided for in section 1265; *Post*, p. 1291.

3. An agreement made upon consideration of marriage other than a mutual promise to marry;

4. An agreement for the leasing of real property for a longer period than one year, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent is in writing, subscribed by the party sought to be charged;

5. An agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation or a commission;

6. An agreement which by its terms is not to be performed during the lifetime of the promisor, or an agreement to bequeath any property, or make any provision for any person by will.

CROSS REFERENCES

Contracts to sell or sales of goods or choses in action, see section 600. *Post*, p. 1204.
Fraudulent transfers, see section 1660. *Post*, p. 1339.
Guaranty, see sections 1264 et seq. *Post*, p. 1291.
Oral authorization, sufficiency of, see section 1046. *Post*, p. 1265.
Power of attorney to execute mortgage, see section 1345. *Post*, p. 1301.

Effect of.

SEC. 542. EFFECT OF WRITTEN CONTRACTS.—The execution of a contract in writing, whether the law requires it to be written or not, supersedes all the negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument.

CROSS REFERENCE

Writing supersedes oral stipulations, see section 550. *Post*, p. 1198.

Time of taking effect.

SEC. 543. CONTRACT IN WRITING, TAKES EFFECT WHEN.—A contract in writing takes effect upon its delivery to the party in whose favor it is made, or to his agent.

CROSS REFERENCE

Delivery of transfers in writing, see generally section 268. *Ante*, p. 1162.

Provisions concerning delivery.

SEC. 544. PROVISIONS ON DELIVERY OF GRANTS TO APPLY.—The provisions of sections 264 and 267 to 272, concerning the delivery of grants, absolute and conditional, apply to all written contracts. *Ante*, p. 1161.

CROSS REFERENCE

Mode of transfer, see sections 264 et seq. *Ante*, p. 1161.

Distinctions between sealed and unsealed instruments abolished.

SEC. 545. DISTINCTIONS BETWEEN SEALED AND UNSEALED INSTRUMENTS ABOLISHED.—All distinctions between sealed and unsealed instruments are abolished.

CHAPTER 30.—INTERPRETATION OF CONTRACTS

INTERPRETATION OF CONTRACTS.

Uniformity of interpretation.

SEC. 546. UNIFORMITY OF INTERPRETATION.—All contracts, whether public or private, are to be interpreted by the same rules, except as otherwise provided by this code.

Intent of parties.

SEC. 547. CONTRACTS, HOW TO BE INTERPRETED.—A contract must be so interpreted as to give effect to the mutual intention of the parties as it existed at the time of contracting, so far as the same is ascertainable and lawful.

CROSS REFERENCE

Post, p. 1199. Contract restricted to its evident object, see section 559.

How ascertained.

SEC. 548. INTENTION OF PARTIES, HOW ASCERTAINED.—For the purpose of ascertaining the intention of the parties to a contract, if otherwise doubtful, the rules given in this chapter are to be applied.

CROSS REFERENCE

Post, p. 1199. Construction against party causing ambiguity, see section 565.

From language.

SEC. 549. INTENTION TO BE ASCERTAINED FROM LANGUAGE.—The language of a contract is to govern its interpretation, if the language is clear and explicit, and does not involve an absurdity.

Interpretation of written contracts.

SEC. 550. INTERPRETATION OF WRITTEN CONTRACTS.—When a contract is reduced to writing, the intention of the parties is to be ascertained from the writing alone, if possible; subject, however, to the other provisions of this chapter.

CROSS REFERENCE

Ante, p. 1197. Writing supersedes oral negotiations, see section 542.

Writing, when disregarded.

SEC. 551. WRITING, WHEN DISREGARDED.—When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarded.

CROSS REFERENCES

Post, p. 1337. Principles governing in revising contracts, see section 1643.

Post, p. 1337. Revising contract for fraud or mistake, see section 1641.

Effect to be given to every part of contract.

SEC. 552. EFFECT TO BE GIVEN TO EVERY PART OF CONTRACT.—The whole of a contract is to be taken together, so as to give effect to every part, if reasonably practicable, each clause helping to interpret the other.

CROSS REFERENCE

Post, p. 1199. Repugnancies and inconsistencies in, see sections 563 and 564.

Several contracts construed as one.

SEC. 553. SEVERAL CONTRACTS, WHEN TAKEN TOGETHER.—Several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction, are to be taken together.

Interpretation in favor of contract.

SEC. 554. INTERPRETATION IN FAVOR OF CONTRACT.—A contract must receive such an interpretation as will make it lawful, operative, definite, reasonable, and capable of being carried into effect, if it can be done without violating the intention of the parties.

Words to be understood in usual sense.

SEC. 555. WORDS TO BE UNDERSTOOD IN THE USUAL SENSE.—The words of a contract are to be understood in their ordinary and popular sense, rather than according to their strict legal meaning; unless used by the parties in a technical sense, or unless a special meaning is given to them by usage, in which case the latter must be followed.

Technical words.

SEC. 556. TECHNICAL WORDS.—Technical words are to be interpreted as usually understood by persons in the profession or business to which they relate, unless clearly used in a different sense.

CROSS REFERENCE

Ante, pp. 1124, 1173. Technical words, how constructed, see sections 11 and 361.

Law of place.

SEC. 557. LAW OF PLACE.—A contract is to be interpreted according to the law and usage of the place where it is to be performed; or, if it does not indicate a place of performance, according to the law and usage of the place where it is made.

Contracts explained by circumstances.

SEC. 558. CONTRACTS EXPLAINED BY CIRCUMSTANCES.—A contract may be explained by reference to the circumstances under which it was made, and the matter to which it relates.

Contract restricted to object.

SEC. 559. CONTRACT RESTRICTED TO ITS EVIDENT OBJECT.—However broad may be the terms of a contract, it extends only to those things concerning which it appears that the parties intended to contract.

Interpretation in sense in which promisor believed promisee to rely.

SEC. 560. INTERPRETATION IN SENSE IN WHICH PROMISOR BELIEVED PROMISEE TO RELY.—If the terms of a promise are in any respect ambiguous or uncertain, it must be interpreted in the sense in which the promisor believed, at the time of making it, that the promisee understood it.

CROSS REFERENCE

Interpretation against promisor, see section 565.

Particular clauses subordinate.

SEC. 561. PARTICULAR CLAUSES SUBORDINATE TO GENERAL INTENT.—Particular causes [1] of a contract are subordinate to its general intent.

CROSS REFERENCE

Repugnancies and inconsistencies, see sections 563 and 564.

Writing to govern print.

SEC. 562. CONTRACT, PARTLY WRITTEN AND PARTLY PRINTED.—Where a contract is partly written and partly printed, or where part of it is written or printed under the special directions of the parties, and with a special view to their intention, and the remainder is copied from a form originally prepared without special reference to the particular parties and the particular contract in question, the written parts control the printed parts, and the parts which are purely original control those which are copied from a form. And if the two are absolutely repugnant, the latter must be so far disregarded.

Repugnances, how reconciled.

SEC. 563. REPUGNANCES, HOW RECONCILED.—Repugnancy in a contract must be reconciled, if possible, by such an interpretation as will give some effect to the repugnant clauses, subordinate to the general intent and purpose of the whole contract.

CROSS REFERENCE

Inconsistent words rejected, see section 564.

Inconsistent words rejected.

SEC. 564. INCONSISTENT WORDS REJECTED.—Words in a contract which are wholly inconsistent with its nature, or with the main intention of the parties, are to be rejected.

CROSS REFERENCE

Repugnances, how reconciled, see section 563.

Against whom words are to be taken most strongly.

SEC. 565. WORDS TO BE TAKEN MOST STRONGLY AGAINST WHOM.—In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

[1] So in original.

CROSS REFERENCES

Ante, p. 1199. Interpretation in sense promisor believed promisee to rely, see section 560.
Ante, p. 1162. Interpretation of doubtful words, see section 275.

Reasonable stipulations, when implied.

SEC. 566. REASONABLE STIPULATIONS, WHEN IMPLIED.—Stipulations which are necessary to make a contract reasonable, or conformable to usage, are implied, in respect to matters concerning which the contract manifests no contrary intention.

Necessary incidents implied.

SEC. 567. NECESSARY INCIDENTS IMPLIED.—All things that in law or usage are considered as incidental to a contract, or as necessary to carry it into effect, are implied therefrom, unless some of them are expressly mentioned therein, when all other things of the same class are deemed to be excluded.

CROSS REFERENCE

Ante, p. 1163; *post*, p. 1346. Incident follows principal, see sections 280 and 1728.

Time of performance.

SEC. 568. TIME OF PERFORMANCE OF CONTRACT.—If no time is specified for the performance of an act required to be performed, a reasonable time is allowed. If the act is in its nature capable of being done instantly—as, for example, if it consists in the payment of money only—it must be performed immediately upon the thing to be done being exactly ascertained.

CROSS REFERENCE

Ante, p. 1173. Delay in, where time not of essence, see section 360.

Joint and several.

SEC. 569. WHEN JOINT AND SEVERAL.—Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

SEC. 570. SAME.—A promise, made in the singular number, but executed by several persons, is presumed to be joint and several.

CROSS REFERENCE

Ante, p. 1182. Contracts, joint and several, see sections 427 et seq.

Executed and executory contracts.

SEC. 571. EXECUTED AND EXECUTORY CONTRACTS, WHAT.—An executed contract is one, the object of which is fully performed. All others are executory.

UNLAWFUL CONTRACTS.

CHAPTER 31.—UNLAWFUL CONTRACTS

Defined.

SEC. 572. WHAT IS UNLAWFUL.—That is not lawful which is:

1. Contrary to an express provision of law;

2. Contrary to the policy of express law, though not expressly prohibited; or,

3. Otherwise contrary to good morals.

CROSS REFERENCES

Ante, p. 1155. Conditions, when void, see sections 219 to 221.
Ante, p. 1192. Contract obtained through duress, menace, fraud, undue influence, or mistake, see section 497.
Post, p. 1201. Contracts in restraint of marriage, see section 578.
Post, p. 1201. Contracts in restraint of trade, see section 576.
Ante, p. 1192. Duress, see section 499.
Ante, p. 1192. Fraud, see sections 501 et seq.
Ante, p. 1192. Menace, see section 500.
Ante, p. 1193. Mistake, see sections 506 et seq.
Ante, p. 1193. Undue influence, see section 505.

Unlawful contracts.

SEC. 573. CERTAIN CONTRACTS UNLAWFUL.—All contracts which have for their object, directly or indirectly, to exempt any one from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.

CROSS REFERENCES

Carrier can not exempt himself from liability for negligent or wrongful acts, see section 963. *Post*, p. 1256.

Fraud, see sections 501 et seq. *Ante*, p. 1192.

Contract fixing damages, void.

SEC. 574. CONTRACT FIXING DAMAGES, VOID.—Every contract by which the amount of damage to be paid, or other compensation to be made, for a breach of an obligation, is determined in anticipation thereof, is to that extent void, except as expressly provided in section 575.

Exception.

SEC. 575. EXCEPTION.—The parties to a contract may agree therein upon an amount which shall be presumed to be the amount of damage sustained by a breach thereof, when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual damage.

Contract in restraint of trade, void.

SEC. 576. CONTRACT IN RESTRAINT OF TRADE, VOID.—Every contract by which any one is restrained from exercising a lawful profession, trade, or business of any kind, otherwise than is provided by sections 577 and 578, is to that extent void.

Exception, in favor of partnership arrangements.

SEC. 577. EXCEPTIONS IN FAVOR OF PARTNERSHIP ARRANGEMENTS.—Partners may, upon or in anticipation of a dissolution of the partnership, agree that none of them will carry on a similar business within the same city or town where the partnership business has been transacted, or within a specified part thereof.

Contract in restraint of marriage, void.

SEC. 578. CONTRACT IN RESTRAINT OF MARRIAGE, VOID.—Every contract in restraint of the marriage of any person, other than a minor, is void.

CROSS REFERENCE

Conditions in restraint of marriage, see section 220. *Ante*, p. 1156.

CHAPTER 32.—EXTINCTION OF CONTRACTS

EXTINCTION OF CONTRACTS.

IN GENERAL

In general.

How extinguished.

SEC. 579. CONTRACT, HOW EXTINGUISHED.—A contract may be extinguished in like manner with any other obligation, and also in the manner prescribed by this chapter.

CROSS REFERENCE

Cancellation of instruments, see sections 1648 et seq. *Post*, p. 1337.

RESCISSION

Rescission.

Contract extinguished by.

SEC. 580. RESCISSION EXTINGUISHES CONTRACT.—A contract is extinguished by its rescission.

When party may rescind.

SEC. 581. WHEN PARTY MAY RESCIND.—A party to a contract may rescind the same in the following cases only:

1. If the consent of the party rescinding, or of any party jointly contracting with him, was given by mistake, or obtained through duress, menace, fraud, or undue influence, exercised by or with the connivance of the party as to whom he rescinds, or of any other party to the contract jointly interested with such party;

2. If, through the fault of the party as to whom he rescinds, the consideration for his obligation fails, in whole or in part;

3. If such consideration becomes entirely void from any cause;

4. If such consideration, before it is rendered to him, fails in a material respect, from any cause; or,

5. By consent of all the other parties.

CROSS REFERENCES

Post, p. 1337. Cancellation of instruments, see sections 1648 et seq.

Ante, p. 1192. Contract not free, when obtained by mistake, duress, menace, fraud, or undue influence, see section 497.

Post, p. 1283. False representation, rescission of insurance policy for, see section 1189.

Post, p. 1282. Falsity of warranty, rescission of insurance policy for, see section 1178.

Post, p. 1337. Rescission, see sections 1645 et seq.

Stipulation against right to rescind, see section 582.

Post, p. 1285. Violation of material warranty, rescission of insurance policy for, see section 1214.

Stipulations against right to rescind.

SEC. 582. WHEN STIPULATIONS AGAINST RIGHT TO RESCIND DO NOT DEFEAT IT.—A stipulation that errors of description shall not avoid a contract, or shall be the subject of compensation, or both, does not take away the right of rescission for fraud, nor for mistake, where such mistake is in a matter essential to the inducement of the contract, and is not capable of exact and entire compensation.

Rescission, how effected.

SEC. 583. RESCISSION, HOW EFFECTED.—Rescission, when not effected by consent, can be accomplished only by the use, on the part of the party rescinding, of reasonable diligence to comply with the following rules:

1. He must rescind promptly, upon discovering the facts which entitle him to rescind, if he is free from duress, menace, undue influence, or disability, and is aware of his right to rescind; and,

2. He must restore to the other party everything of value which he has received from him under the contract; or must offer to restore the same, upon condition that such party shall do likewise, unless the latter is unable or positively refuses to do so.

CROSS REFERENCE

Post, p. 1337. Rescission of contracts, see sections 1645 to 1647.

Alteration and cancellation.

ALTERATION AND CANCELLATION

Alteration of verbal contract.

SEC. 584. ALTERATION OF VERBAL CONTRACT.—A contract not in writing may be altered in any respect by consent of the parties, in writing, without a new consideration, and is extinguished thereby to the extent of the new alteration.

Written contracts, how modified.

SEC. 585. WRITTEN CONTRACTS, HOW MODIFIED.—A contract in writing may be altered by a contract in writing, or by an executed oral agreement, and not otherwise.

CROSS REFERENCES

Post, p. 1337. Cancellation of contracts, see sections 1648 et seq.

Ante, p. 1198. Parol evidence to alter writings, see section 550.

Extinction by cancellation, etc.

SEC. 586. EXTINCTION BY CANCELLATION, ETC.—The destruction or cancellation of a written contract, or of the signature of the parties liable thereon, with intent to extinguish the obligation thereof, extinguishes it as to all the parties consenting to the act.

By unauthorized alteration.

SEC. 587. EXTINCTION BY UNAUTHORIZED ALTERATION.—The intentional destruction, cancellation, or material alteration of a written

contract, by a party entitled to any benefit under it, or with his consent, extinguishes all the executory obligations of the contract in his favor, against parties who do not consent to the act.

Alteration of duplicate.

SEC. 588. ALTERATION OF DUPLICATE, NOT TO PREJUDICE.—Where a contract is executed in duplicate, an alteration or destruction of one copy, while the other exists, is not within the provisions of section 587.

CHAPTER 33.—OBLIGATIONS IMPOSED BY LAW

OBLIGATIONS IMPOSED BY LAW.

Abstinence from injury.

SEC. 589. ABSTINENCE FROM INJURY.—Every person is bound, without contract, to abstain from injuring the person or property of another, or infringing upon any of his rights.

Fraudulent deceit.

SEC. 590. FRAUDULENT DECEIT.—One who willfully deceives another with intent to induce him to alter his position to his injury, or risk, is liable for any damage which he thereby suffers.

CROSS REFERENCE

Fraud, see sections 501 et seq. *Ante*, p. 1192.

"Deceit," defined.

SEC. 591. DECEIT, WHAT.—A deceit, within the meaning of section 590, is either:

1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
2. The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or
4. A promise made without any intention of performing it.

CROSS REFERENCE

Fraud, actual or constructive, see sections 501 et seq. *Ante*, p. 1192.

Deceit upon the public, etc.

SEC. 592. DECEIT UPON THE PUBLIC, ETC.—One who practices a deceit with intent to defraud the public, or a particular class of persons, is deemed to have intended to defraud every individual in that class, who is actually misled by the deceit.

Restoration of thing wrongfully acquired.

SEC. 593. RESTORATION OF THING WRONGFULLY ACQUIRED.—One who obtains a thing without the consent of its owner, or by a consent afterwards rescinded, or by an unlawful exaction which the owner could not at the time prudently refuse, must restore it to the person from whom it was thus obtained, unless he has acquired a title thereto superior to that of such other person, or unless the transaction was corrupt and unlawful on both sides.

When demand necessary.

SEC. 594. WHEN DEMAND NECESSARY.—The restoration required by section 593 must be made without demand, except where a thing is obtained by mutual mistake, in which case the party obtaining the thing is not bound to return it until he has notice of the mistake.

Responsibility for willful acts, negligence, etc.

SEC. 595. RESPONSIBILITY FOR WILLFUL ACTS, NEGLIGENCE, ETC.—Every one is responsible, not only for the result of his willful acts, but also for an injury occasioned to another by his want of ordinary care or skill in the management of his property or person, except so far as the latter has willfully brought the injury upon himself. Want of ordinary care on the part of the injured person shall not bar a recovery, but the damages shall be diminished by the court or jury in proportion to the want of ordinary care attributable to such person. The extent of liability in the cases covered by this section is defined by the chapter on compensatory relief.

CROSS REFERENCE

Post, p. 1330. Compensatory relief, see sections 1597 et seq.

Other obligations. *Ante*, pp. 1125-1178. SEC. 596. OTHER OBLIGATIONS.—Other obligations are prescribed by chapters 2 to 26 of this code.

SALES OF GOODS.

CHAPTER 34.—SALES OF GOODS

NOTE.—This chapter was derived from the Uniform Sales Act.

Contracts to sell and sales. SEC. 597. CONTRACTS TO SELL AND SALES.—1. A contract to sell goods is a contract whereby the seller agrees to transfer the property in goods to the buyer for a consideration called the price.

2. A sale of goods is an agreement whereby the seller transfers the property in goods to the buyer for a consideration called the price.

3. A contract to sell or a sale may be absolute or conditional.

4. There may be a contract to sell or a sale between one part owner and another.

Capacity; liabilities for necessaries. SEC. 598. CAPACITY; LIABILITIES FOR NECESSARIES.—Capacity to buy and sell is regulated by the general law concerning capacity to contract, and to transfer and acquire property. Where necessaries are sold and delivered to an infant, or to a person who by reason of mental incapacity or drunkenness is incompetent to contract, he must pay a reasonable price therefor. Necessaries in this section mean goods suitable to the condition in life of such infant or other person, and to his actual requirements at the time of delivery.

Form of contract or sale. SEC. 599. FORM OF CONTRACT OR SALE.—Subject to the provisions of this chapter and of any statute in that behalf, a contract to sell or a sale may be made in writing (either with or without seal), or by word of mouth, or partly in writing and partly by word of mouth, or may be inferred from the conduct of the parties.

Statute of frauds. SEC. 600. STATUTE OF FRAUDS.—A contract to sell or a sale of any goods or choses in action of the value of $50 or upwards shall not be enforceable by action unless the buyer shall accept part of the goods or choses in action so contracted to be sold or sold, and actually receive the same, or give something in earnest to bind the contract, or in part payment, or unless some note or memorandum in writing of the contract or sale be signed by the party to be charged or his agent in that behalf.

2. The provisions of this section apply to every such contract or sale, notwithstanding that the goods may be intended to be delivered at some future time or may not at the time of such contract or sale be actually made, procured, or provided, or fit or ready for delivery, or some act may be requisite for the making or completing thereof, or rendering the same fit for delivery; but if the goods are to be manufactured by the seller especially for the buyer and are not suitable for sale to others in the ordinary course of the seller's business, the provisions of this section shall not apply.

"Acceptance" under. 3. There is an acceptance of goods within the meaning of this section when the buyer, either before or after delivery of the goods, expresses by words or conduct his assent to becoming the owner of those specific goods.

CROSS REFERENCE

Ante, p. 1197. What contracts must be written, in general, see section 541.

Existing and future goods. SEC. 601. EXISTING AND FUTURE GOODS.—1. The goods which form the subject of a contract to sell may be either existing goods, owned or possessed by the seller, or goods to be manufactured or acquired by

the seller after the making of the contract to sell, in this chapter called "future goods."

2. There may be a contract to sell goods, the acquisition of which by the seller depends upon a contingency which may or may not happen.

3. Where the parties purport to effect a present sale of future goods, the agreement operates as a contract to sell the goods.

Undivided shares.

SEC. 602. UNDIVIDED SHARES.—1. There may be a contract to sell or a sale of an undivided share of goods. If the parties intend to effect a present sale, the buyer, by force of the agreement, becomes an owner in common with the owner or owners of the remaining shares.

Fungibles.

2. In the case of fungible goods, there may be a sale of an undivided share of a specific mass, though the seller purports to sell and the buyer to buy a definite number, weight or measure of the goods in the mass, and though the number, weight or measure of the goods in the mass, is undetermined. By such a sale the buyer becomes owner in common of such a share of the mass as the number, weight, or measure bought bears to the number, weight, or measure of the mass. If the mass contains less than the number, weight, or measure bought, the buyer becomes the owner of the whole mass and the seller is bound to make good the deficiency from similar goods unless a contrary intent appears.

Destruction of goods sold.

SEC. 603. DESTRUCTION OF GOODS SOLD.—1. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have wholly perished at the time when the agreement is made, the agreement is void.

2. Where the parties purport to sell specific goods, and the goods without the knowledge of the seller have perished in part or have wholly or in a material part so deteriorated in quality as to be substantially changed in character, the buyer may at his option treat the sale—

(a) As avoided, or

(b) As transferring the property in all of the existing goods or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the sale was indivisible, or to pay the agreed price for the goods in which the property passes if the sale was divisible.

Destruction of, contracted to be sold.

SEC. 604. DESTRUCTION OF GOODS CONTRACTED TO BE SOLD.—1. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault on the part of the seller or the buyer, the goods wholly perish, the contract is thereby avoided.

2. Where there is a contract to sell specific goods, and subsequently, but before the risk passes to the buyer, without any fault of the seller or the buyer, part of the goods perish or the whole or a material part of the goods so deteriorate in quality as to be substantially changed in character, the buyer may at his option treat the contract—

(a) As avoided, or

(b) As binding the seller to transfer the property in all of the existing goods, or in so much thereof as have not deteriorated, and as binding the buyer to pay the full agreed price if the contract was indivisible, or to pay the agreed price for so much of the goods as the seller, by the buyer's option, is bound to transfer if the contract was divisible.

Ascertainment of price.

SEC. 605. DEFINITION AND ASCERTAINMENT OF PRICE.—1. The price may be fixed by the contract, or may be left to be fixed in such manner as may be agreed, or it may be determined by the course of dealing between the parties.

2. The price may be made payable in any personal property.

3. Where transferring or promising to transfer any interest in real estate constitutes the whole or part of the consideration for transferring or for promising to transfer the property in goods, this chapter shall not apply.

4. Where the price is not determined in accordance with the foregoing provisions the buyer must pay a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Sale at a valuation.

SEC. 606. SALE AT A VALUATION.—1. Where there is a contract to sell or a sale of goods at a price or on terms to be fixed by a third person, and such third person without fault of the seller or the buyer, can not or does not fix the price or terms, the contract or the sale is thereby avoided; but if the goods or any part thereof have been delivered to and appropriated by the buyer he must pay a reasonable price therefor.

2. Where such third person is prevented from fixing the price or terms by fault of the seller or the buyer, the party not in fault may have such remedies against the party in fault as are allowed by the appropriate parts of this chapter.

Effect of condition.

SEC. 607. EFFECT OF CONDITION.—1. Where the obligation of either party to a contract to sell or a sale is subject to any condition which is not performed, such party may refuse to proceed with the contract or sale or he may waive performance of the condition. If the other party has promised that the condition should happen or be performed, such first mentioned party may also treat the nonperformance of the condition as a breach of warranty.

2. Where the property in the goods has not passed, the buyer may treat the fulfillment by the seller of his obligation to furnish goods as described and as warranted expressly or by implication in the contract to sell as a condition of the obligation of the buyer to perform his promise to accept and pay for the goods.

Express warranty.

SEC. 608. DEFINITION OF EXPRESS WARRANTY.—Any affirmation of fact or any promise by the seller relating to the goods is an express warranty if the natural tendency of such affirmation or promise is to induce the buyer to purchase the goods, and if the buyer purchases the goods relying thereon. No affirmation of the value of the goods, nor any statement purporting to be a statement of the seller's opinion only shall be construed as a warranty.

Implied warranties.

SEC. 609. IMPLIED WARRANTIES OF TITLE.—In a contract to sell or a sale, unless contrary intention appears, there is

1. An implied warranty on the part of the seller that in case of a sale he has a right to sell the goods, and that in case of a contract to sell he will have a right to sell the goods at the time when the property is to pass;

2. An implied warranty that the buyer shall have and enjoy quiet possession of the goods as against any lawful claims existing at the time of the sale;

3. An implied warranty that the goods shall be free at the time of the sale from any charge or encumbrance in favor of any third person, not declared or known to the buyer before or at the time when the contract or sale is made.

4. This section shall not, however, be held to render liable a marshal, auctioneer, mortgagee or other person professing to sell by virtue of authority in fact or law goods in which a third person has a legal or equitable interest.

When sale by description.

SEC. 610. IMPLIED WARRANTY IN SALE BY DESCRIPTION.—Where there is a contract to sell or a sale of goods by description, there is an implied warranty that the goods shall correspond with the descrip-

tion and if the contract or sale be by sample, as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description.

Implied warranties of quality.

SEC. 611. IMPLIED WARRANTIES OF QUALITY.—Subject to the provisions of this chapter and of any statute in that behalf, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract to sell or a sale, except as follows:

1. Where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, and it appears that the buyer relies on the seller's skill or judgment (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be reasonably fit for such purpose.

2. Where the goods are bought by description from a seller who deals in goods of that description (whether he be the grower or manufacturer or not), there is an implied warranty that the goods shall be of merchantable quality.

3. If the buyer has examined the goods, there is no implied warranty as regards defects which such examination ought to have revealed.

4. In the case of a contract to sell or a sale of a specified article under its patent or other trade name, there is no implied warranty as to its fitness for any particular purpose.

5. An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade.

6. An express warranty or condition does not negative a warranty or condition implied under this chapter unless inconsistent therewith.

When sale by sample.

SEC. 612. IMPLIED WARRANTIES IN SALE BY SAMPLE.—In the case of a contract to sell or a sale by sample:

(a) There is an implied warranty that the bulk shall correspond with the sample in quality.

(b) There is an implied warranty that the buyer shall have a reasonable opportunity of comparing the bulk with the sample, except so far as otherwise provided in subdivision 3 of section 643.

Post, p. 1214.

(c) If the seller is a dealer in goods of that kind, there is an implied warranty that the goods shall be free from any defect rendering them unmerchantable which would not be apparent on reasonable examination of the sample.

No property passes until goods are ascertained.

SEC. 613. NO PROPERTY PASSES UNTIL GOODS ARE ASCERTAINED.—Where there is a contract to sell unascertained goods no property in the goods is transferred to the buyer unless and until the goods are ascertained, but property in an undivided share of ascertained goods may be transferred as provided in section 602.

Ante, p. 1205.

Passing of property in specific goods.

SEC. 614. PROPERTY IN SPECIFIC GOODS PASSES WHEN PARTIES SO INTEND.—1. Where there is a contract to sell specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.

2. For the purpose of ascertaining the intention of the parties, regard shall be had to the terms of the contract, the conduct of the parties, usages of trade, and the circumstances of the case.

Rules for ascertaining intention.

SEC. 615. RULES FOR ASCERTAINING INTENTION.—Unless a different intention appears, the following are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer:

RULE 1. Where there is an unconditional contract to sell specific goods, in a deliverable state, the property in the goods passes to the buyer when the contract is made and it is immaterial whether the time of payment, or the time of delivery, or both, be postponed.

RULE 2. Where there is a contract to sell specific goods and the seller is bound to do something to the goods, for the purpose of putting them into a deliverable state, the property does not pass until such thing be done.

RULE 3. 1. When goods are delivered to the buyer "on sale or return," or on other terms indicating an intention to make a present sale, but to give the buyer an option to return the goods instead of paying the price, the property passes to the buyer on delivery, but he may revest the property in the seller by returning or tendering the goods within the time fixed in the contract, or, if no time has been fixed, within a reasonable time.

2. When goods are delivered to the buyer on approval or on trial or on satisfaction, or other similar terms, the property therein passes to the buyer—

(a) When he signifies his approval or acceptance to the seller or does any other act adopting the transaction;

(b) If he does not signify his approval or acceptance to the seller, but retains the goods without giving notice of rejection, then if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time. What is a reasonable time is a question of fact.

RULE 4. 1. Where there is a contract to sell unascertained or future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

2. Where, in pursuance of a contract to sell, the seller delivers the goods to the buyer, or to a carrier or other bailee (whether named by the buyer or not) for the purpose of transmission to or holding for the buyer, he is presumed to have unconditionally appropriated the goods to the contract, except in the cases provided for in the next rule and in section 616. This presumption is applicable, although by the terms of the contract the buyer is to pay the price before receiving delivery of the goods and the goods are marked with the words "collect on delivery" or their equivalents.

RULE 5. If the contract to sell requires the seller to deliver the goods to the buyer, or at a particular place, or to pay the freight or cost of transportation to the buyer, or to a particular place, the property does not pass until the goods have been delivered to the buyer or reached the place agreed upon.

Reservation of right of possession, etc., when goods shipped.

SEC. 616. RESERVATION OF RIGHT OF POSSESSION OR PROPERTY WHEN GOODS ARE SHIPPED.—1. Where there is a contract to sell specific goods, or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of possession or property in the goods until certain conditions have been fulfilled. The right of possession or property may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

2. Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the property in the goods. But if, except for the form of the bill of lading the property would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

3. Where goods are shipped, and by the bill of lading the goods are deliverable to the order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

4. Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the property in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful.

Sale by auction.

SEC. 617. SALE BY AUCTION.—In the case of sale by auction—

1. Where goods are put up for sale by auction in lots each lot is the subject of a separate contract of sale.

2. A sale by auction is complete when the auctioneer announces its completion by the fall of the hammer, or in other customary manner. Until such announcement is made, any bidder may retract his bid; and the auctioneer may withdraw the goods from sale unless the auction has been announced to be without reserve.

3. A right to bid may be reserved expressly by or on behalf of the seller.

4. Where notice has not been given that a sale by auction is subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ or induce any person to bid at such sale on his behalf, or for the auctioneer to employ or induce any person to bid at such sale on behalf of the seller or knowingly to take any bid from the seller or any person employed by him. Any sale contravening this rule may be treated as fraudulent by the buyer.

Risk of loss.

SEC. 618. RISK OF LOSS.—Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer the goods are at the buyer's risk whether delivery has been made or not, except that—

(a) Where delivery of goods has been made to the buyer, or to a bailee for the buyer, in pursuance of the contract and the property in the goods has been retained by the seller merely to secure performance by the buyer of his obligations under the contract, the goods are at the buyer's risk from the time of such delivery.

(b) Where delivery has been delayed through the fault of either buyer or seller the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault.

Sale by person not the owner.

SEC. 619. SALE BY PERSON NOT THE OWNER.—1. Subject to the provisions of this chapter, where goods are sold by a person who is not the owner thereof, and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by his conduct precluded from denying the seller's authority to sell.

2. Nothing in this chapter, however, shall affect—

No effect on factors, recording, etc., acts.

(a) The provisions of any factors' acts, recording acts, or any enactment enabling the apparent owner of goods to dispose of them as if he were the true owner thereof.

Sales under order of court.

(b) The validity of any contract to sell or sale under any special common law or statutory power of sale or under the order of a court of competent jurisdiction.

When title voidable.

SEC. 620. SALE BY ONE HAVING A VOIDABLE TITLE.—Where the seller of goods has a voidable title thereto, but his title has not been avoided at the time of the sale, the buyer acquires a good title to the goods, provided he buys them in good faith, for value, and without notice of the seller's defect of title.

When in possession of goods already sold.

SEC. 621. SALE BY SELLER IN POSSESSION OF GOODS ALREADY SOLD.—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods, the delivery or transfer by that person, or by an agent acting for him, of the goods or documents of title under any sale, pledge, or other disposition thereof, to any person receiving and paying value for the same in good faith and without notice of the previous sale, shall have the same effect as if the person making the delivery or transfer were expressly authorized by the owner of the goods to make the same.

Creditors' rights against sold goods.

SEC. 622. CREDITORS' RIGHTS AGAINST SOLD GOODS IN SELLER'S POSSESSION.—Where a person having sold goods continues in possession of the goods, or of negotiable documents of title to the goods and such retention of possession is fraudulent in fact or is deemed fraudulent under any rule of law, a creditor or creditors of the seller may treat the sale as void.

Negotiable documents of title.

SEC. 623. DEFINITION OF NEGOTIABLE DOCUMENTS OF TITLE.—A document of title in which it is stated that the goods referred to therein will be delivered to the bearer, or to the order of any person named in such document is a negotiable document of title.

Negotiation by delivery.

SEC. 624. NEGOTIATION OF NEGOTIABLE DOCUMENTS BY DELIVERY.—A negotiable document of title may be negotiated by delivery—

(a) Where, by the terms of the document, the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the bearer, or

(b) Where, by the terms of the document, the carrier, warehouseman, or other bailee issuing the same undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the document has indorsed it in blank or to bearer.

Where, by the terms of a negotiable document of title, the goods are deliverable to bearer or where a negotiable document of title has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the document shall thereafter be negotiated only by the indorsement of such indorsee.

By indorsement.

SEC. 625. NEGOTIATION OF NEGOTIABLE DOCUMENTS BY INDORSEMENT.—A negotiable document of title may be negotiated by the indorsement of the person to whose order the goods are by the terms of the document deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

Negotiable documents marked "not negotiable."

SEC. 626. NEGOTIABLE DOCUMENTS OF TITLE MARKED "NOT NEGOTIABLE."—If a document of title which contains an undertaking by a carrier, warehouseman, or other bailee to deliver the goods to the bearer, to a specified person or order, or to the order of a specified person, or which contains words of like import, has placed upon it the words "not negotiable," "nonnegotiable," or the like, such a document may nevertheless be negotiated by the holder and is a negotiable document of title within the meaning of this chapter.

But nothing in this chapter contained shall be construed as limiting or defining the effect upon the obligations of the carrier, warehouseman, or other bailee issuing a document of title of placing thereon the words "not negotiable," "nonnegotiable," or the like.

Transfer of nonnegotiable documents.

SEC. 627. TRANSFER OF NONNEGOTIABLE DOCUMENTS.—A document of title which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable document can not be negotiated, and the indorsement of such a document gives the transferee no additional right.

Who may negotiate a document.

SEC. 628. WHO MAY NEGOTIATE A DOCUMENT.—A negotiable document of title may be negotiated—

(a) By the owner thereof, or

(b) By any person to whom the possession or custody of the document has been entrusted by the owner, if, by the terms of the document the bailee issuing the document undertakes to deliver the goods to the order of the person to whom the possession or custody of the document has been entrusted, or if at the time of such entrusting the document is in such form that it may be negotiated by delivery.

Rights of person to whom negotiated.

SEC. 629. RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN NEGOTIATED.—A person to whom a negotiable document of title has been duly negotiated acquires thereby—

(a) Such title to the goods as the person negotiating the document to him had or had ability to convey to a purchaser in good faith for value and also such title to the goods as the person to whose order the goods were to be delivered by the terms of the document had or had ability to convey to a purchaser in good faith for value, and

(b) The direct obligation of the bailee issuing the document to hold possession of the goods for him according to the terms of the document as fully as if such bailee had contracted directly with him.

To whom transferred.

SEC. 630. RIGHTS OF PERSON TO WHOM DOCUMENT HAS BEEN TRANSFERRED.—A person to whom a document of title has been transferred, but not negotiated, acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the document is nonnegotiable, such person also acquires the right to notify the bailee who issued the document of the transfer thereof, and thereby to acquire the direct obligation of such bailee to hold possession of the goods for him according to the terms of the document. Prior to the notification of such bailee by the transferor or transferee of a nonnegotiable document of title, the title of the transferee to the goods and the right to acquire the obligation of such bailee may be defeated by the levy of an attachment of execution upon the goods by a creditor of the transferor, or by a notification to such bailee by the transferor or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

Transfer without indorsement.

SEC. 631. TRANSFER OF NEGOTIABLE DOCUMENT WITHOUT INDORSEMENT.—Where a negotiable document of title is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the document unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Warranties.

SEC. 632. WARRANTIES ON SALE OF DOCUMENTS.—A person who for value negotiates or transfers a document of title by indorsement or

delivery, including one who assigns for value a claim secured by a document of title unless a contrary intention appears, warrants:

(a) That the document is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the document; and

(d) That he has a right to transfer the title to the goods and that the goods are merchantable or fit for a particular purpose, whenever such warranties would have been implied if the contract of the parties had been to transfer without a document of title the goods represented thereby.

Indorser not a guarantor.

SEC. 633. INDORSER NOT A GUARANTOR.—The indorsement of a document of title shall not make the indorser liable for any failure on the part of the bailee who issued the document or previous indorsers thereof to fulfill their respective obligations.

Fraud, mistake, and duress.

SEC. 634. WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE OR DURESS.—The validity of the negotiation of a negotiable document of title is not impaired by the fact that the negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the document was induced by fraud, mistake or duress to entrust the possession or custody thereof to such person, if the person to whom the document was negotiated or a person to whom the document was subsequently negotiated paid value therefor, without notice of the breach of duty, or fraud, mistake or duress.

Attachment or levy upon goods when negotiable document issued.

SEC. 635. ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE DOCUMENT HAS BEEN ISSUED.—If goods are delivered to a bailee by the owner or by a person whose act in conveying the title to them to a purchaser in good faith for value would bind the owner and a negotiable document of title is issued for them they can not thereafter, while in the possession of such bailee, be attached by garnishment or otherwise be levied upon under an execution unless the document be first surrendered to the bailee or its negotiation enjoined. The bailee shall in no case be compelled to deliver up the actual possession of the goods until the document is surrendered to him or impounded by the court.

Creditors' remedies.

SEC. 636. CREDITORS' REMEDIES TO REACH NEGOTIABLE DOCUMENTS.—A creditor whose debtor is the owner of a negotiable document of title shall be entitled to such aid from courts of appropriate jurisdiction by injunction and otherwise in attaching such document or in satisfying the claim by means thereof as is allowed at law or in equity in regard to property which can not be readily attached or levied upon by ordinary legal process.

Duty of delivery and acceptance.

SEC. 637. SELLER MUST DELIVER AND BUYER ACCEPT GOODS.—It is the duty of the seller to deliver the goods, and of the buyer to accept and pay for them, in accordance with the terms of the contract to sell or sale.

Delivery and payment concurrent conditions.

SEC. 638. DELIVERY AND PAYMENT ARE CONCURRENT CONDITIONS.—Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions; that is to say, the seller must be ready and willing to give possession of the goods to the buyer in exchange for the price and the buyer must be ready and willing to pay the price in exchange for possession of the goods.

Place, time, and manner of.

SEC. 639. PLACE, TIME, AND MANNER OF DELIVERY.—1. Whether it is for the buyer to take possession of the goods or for the seller to send them to the buyer is a question depending in each case on the contract, express or implied, between the parties. Apart from any such contract, express or implied, or usage of trade to the contrary, the place of delivery is the seller's place of business if he have one,

and if not his residence; but in case of a contract to sell or a sale of specific goods, which to the knowledge of the parties when the contract or the sale was made were in some other place, then that place is the place of delivery.

2. Where by a contract to sell or a sale the seller is bound to send the goods to the buyer, but no time for sending them is fixed, the seller is bound to send them within a reasonable time.

3. Where the goods at the time of sale are in the possession of a third person, the seller has not fulfilled his obligation to deliver to the buyer unless and until such third person acknowledges to the buyer that he holds the goods on the buyer's behalf; but as against all others than the seller the buyer shall be regarded as having received delivery from the time when such third person first has notice of the sale. Nothing in this section, however, shall affect the operation of the issue or transfer of any document of title to goods.

4. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

5. Unless otherwise agreed, the expenses of and incidental to putting the goods into a deliverable state must be borne by the seller.

When wrong quantity.

SEC. 640. DELIVERY OF WRONG QUANTITY.—1. Where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them, but if the buyer accepts or retains the goods so delivered, knowing that the seller is not going to perform the contract in full, he must pay for them at contract rate. If, however, the buyer has used or disposed of the goods delivered before he knows that the seller is not going to perform his contract in full, the buyer shall not be liable for more than the fair value to him of the goods so received.

2. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest, or he may reject the whole. If the buyer accepts the whole of the goods so delivered he must pay for them at the contract rate.

3. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or he may reject the whole.

4. The provisions of this section are subject to any usage of trade, special agreement, or course of dealing between the parties.

Delivery in installments.

SEC. 641. DELIVERY IN INSTALLMENTS.—1. Unless otherwise agreed, the buyer of goods is not bound to accept delivery thereof by installments.

2. Where there is a contract to sell goods to be delivered by stated installments, which are to be separately paid for, and the seller makes defective deliveries in respect of one or more installments, or the buyer neglects or refuses to take delivery of or pay for one or more installments, it depends in each case on the terms of the contract and the circumstances of the case whether the breach of contract is so material as to justify the injured party in refusing to proceed further and suing for damages for breach of the entire contract, or whether the breach is severable, giving rise to a claim for compensation, but not to a right to treat the whole contract as broken.

To carrier.

SEC. 642. DELIVERY TO A CARRIER ON BEHALF OF THE BUYER.—1. Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of

Ante, p. 1208.

the goods to the buyer, except in the cases provided for in section 615, rule five, or unless a contrary intent appears.

2. Unless otherwise authorized by the buyer. the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

3. Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit.

Right to examine goods.

SEC. 643. RIGHT TO EXAMINE THE GOODS.—1. Where goods are delivered to the buyer, which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity to examine them for the purpose of ascertaining whether they are in conformity with the contract.

2. Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.

3. Where goods are delivered to a carrier by the seller, in accordance with an order from or agreement with the buyer, upon the terms that the goods shall not be delivered by the carrier to the buyer until he has paid the price, whether such terms are indicated by marking the goods with the words "collect on delivery," or otherwise, the buyer is not entitled to examine the goods before payment of the price in the absence of agreement permitting such examination.

What constitutes acceptance.

SEC. 644. WHAT CONSTITUTES ACCEPTANCE.—The buyer is deemed to have accepted the goods when he intimates to the seller that he has accepted them, or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

Acceptance not bar to action for damages.

SEC. 645. ACCEPTANCE DOES NOT BAR ACTION FOR DAMAGES.—In the absence of express or implied agreement of the parties, acceptance of the goods by the buyer shall not discharge the seller from liability in damages or other legal remedy for breach of any promise or warranty in the contract to sell or the sale. But, if, after acceptance of the goods, the buyer fails to give notice to the seller of the breach of any promise or warranty within a reasonable time after the buyer knows, or ought to know, of such breach, the seller shall not be liable therefor.

Return of goods wrongly delivered.

SEC. 646. BUYER IS NOT BOUND TO RETURN GOODS WRONGLY DELIVERED.—Unless otherwise agreed, where goods are delivered to the buyer, and he refuses to accept them, having the right so to do, he is not bound to return them to the seller, but it is sufficient if he notifies the seller that he refuses to accept them.

Liability for failure to accept delivery.

SEC. 647. BUYER'S LIABILITY FOR FAILING TO ACCEPT DELIVERY.—When the seller is ready and willing to deliver the goods, and requests the buyer to take delivery, and the buyer does not within a reasonable time after such request take delivery of the goods, he is liable to the seller for any loss occasioned by his neglect or refusal to take delivery, and also for a reasonable charge for the care and custody of the goods. If the neglect or refusal of the buyer to take delivery

amounts to a repudiation or breach of the entire contract, the seller shall have the rights against the goods and on the contract hereinafter provided in favor of the seller when the buyer is in default.

"Unpaid seller" defined.

SEC. 648. DEFINITION OF UNPAID SELLER.—1. The seller of goods is deemed to be an unpaid seller within the meaning of this chapter.

(a) When the whole of the price has not been paid or tendered.

(b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has been broken by reason of the dishonor of the instrument, the insolvency of the buyer, or otherwise.

2. In this part of this chapter the term "seller" includes an agent of the seller to whom the bill of lading has been indorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price, or any other person who is in the position of a seller.

Remedies of.

SEC. 649. REMEDIES OF AN UNPAID SELLER.—1. Subject to the provisions of this chapter, notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of the goods, as such has

(a) A lien on the goods or right to retain them for the price while he is in possession of them;

(b) In case of the insolvency of the buyer, a right of stopping the goods in transitu after he has parted with the possession of them;

(c) A right of resale as limited by this chapter;

(d) A right to rescind the sale as limited by this chapter.

2. Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and coextensive with his rights of lien and stoppage in transitu where the property has passed to the buyer.

When right of lien may be exercised.

SEC. 650. WHEN RIGHT OF LIEN MAY BE EXERCISED.—1. Subject to the provisions of this chapter, the unpaid seller of goods who is in possession of them is entitled to retain possession of them until payment or tender of the price in the following cases, namely:

(a) Where the goods have been sold without any stipulation as to credit;

(b) Where the goods have been sold on credit, but the term of credit has expired;

(c) Where the buyer becomes insolvent.

2. The seller may exercise his right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

Lien after part delivery.

SEC. 651. LIEN AFTER PART DELIVERY.—Where an unpaid seller has made part delivery of the goods, he may exercise his right of lien on the remainder, unless such part delivery has been made under such circumstances as to show an intent to waive the lien or right of retention.

Loss of lien.

SEC. 652. WHEN LIEN IS LOST.—1. The unpaid seller of goods loses his lien thereon:

(a) When he delivers the goods to a carrier or other bailee for the purpose of transmission to the buyer without reserving the property in the goods or the right to the possession thereof;

(b) When the buyer or his agent lawfully obtains possession of the goods;

(c) By waiver thereof.

2. The unpaid seller of goods, having a lien thereon, does not lose his lien by reason only that he has obtained judgment or decree for the price of the goods.

Stoppage in transitu.

SEC. 653. SELLER MAY STOP GOODS ON BUYER'S INSOLVENCY.—Subject to the provisions of this chapter, when the buyer of goods is or becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transitu, that is to say, he may resume possession of the goods at any time while they are in transit, and he will then become entitled to the same rights in regard to the goods as he would have had if he had never parted with the possession.

Goods in transit.

SEC. 654. WHEN GOODS ARE IN TRANSIT.—1. Goods are in transit within the meaning of section 653:

(a) From the time when they are delivered to a carrier by land or water, or other bailee for the purpose of transmission to the buyer, until the buyer, or his agent in that behalf, takes delivery of them from such carrier or other bailee;

(b) If the goods are rejected by the buyer, and the carrier or other bailee continues in possession of them, even if the seller has refused to receive them back.

2. Goods are no longer in transit within the meaning of section 653:

(a) If the buyer, or his agent in that behalf, obtains delivery of the goods before their arrival at the appointed destination;

(b) If, after the arrival of the goods at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent; and it is immaterial that a further destination for the goods may have been indicated by the buyer;

(c) If the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf.

3. If the goods are delivered to a ship chartered by the buyer, it is a question depending on the circumstances of the particular case whether they are in the possession of the master as a carrier or as agent of the buyer.

4. If part delivery of the goods has been made to the buyer, or his agent in that behalf, the remainder of the goods may be stopped in transitu, unless such part delivery has been made under such circumstances as to show an agreement with the buyer to give up possession of the whole of the goods.

Manners of stoppage.

SEC. 655. WAYS OF EXERCISING THE RIGHT TO STOP.—1. The unpaid seller may exercise his right of stoppage in transitu either by obtaining actual possession of the goods or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice, to be effectual, must be given at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may prevent a delivery to the buyer.

2. When notice of stoppage in transitu is given by the seller to the carrier, or other bailee in possession of the goods, he must redeliver the goods to, or according to the directions of, the seller.

The expenses of such delivery must be borne by the seller. If, however, a negotiable document of title representing the goods has been issued by the carrier or other bailee, he shall not be obliged to deliver or justified in delivering the goods to the seller unless such document is first surrendered for cancellation.

Right of resale.

SEC. 656. WHEN AND HOW RESALE MAY BE MADE.—1. Where the goods are of a perishable nature, or where the seller expressly reserves the right of resale in case the buyer should make default, or where the buyer has been in default in the payment of the price

an unreasonable time, an unpaid seller having a right of lien or having stopped the goods in transitu may resell the goods. He shall not thereafter be liable to the original buyer upon the contract to sell or the sale or for any profit made by such resale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. Where a resale is made, as authorized in this section, the buyer acquires a good title as against the original buyer.

3. It is not essential to the validity of a resale that notice of an intention to resell the goods be given by the seller to the original buyer. But where the right to resell is not based on the perishable nature of the goods or upon an express provision of the contract or the sale, the giving or failure to give such notice shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the resale was made.

4. It is not essential to the validity of a resale that notice of the time and place of such resale should be given by the seller to the original buyer.

5. The seller is bound to exercise reasonable care and judgment in making a resale, and subject to this requirement may make a resale either by public or private sale.

Rescission.

SEC. 657. WHEN AND HOW THE SELLER MAY RESCIND THE SALE.—1. An unpaid seller having a right of lien or having stopped the goods in transitu, may rescind the transfer of title and resume the property in the goods, where he expressly reserved the right to do so in case the buyer should make default, or where the buyer has been in default in the payment of the price an unreasonable time. The seller shall not thereafter be liable to the buyer upon the contract to sell or the sale, but may recover from the buyer damages for any loss occasioned by the breach of the contract or the sale.

2. The transfer of title shall not be held to have been rescinded by an unpaid seller until he has manifested by notice to the buyer or by some other overt act an intention to rescind. It is not necessary that such overt act should be communicated to the buyer but the giving or failure to give notice to the buyer of the intention to rescind shall be relevant in any issue involving the question whether the buyer had been in default an unreasonable time before the right of rescission was asserted.

Effect of sale of goods subject to lien or stoppage in transitu.

SEC. 658. EFFECT OF SALE OF GOODS SUBJECT TO LIEN OR STOPPAGE IN TRANSITU.—Subject to the provisions of this chapter, the unpaid seller's right of lien or stoppage in transitu is not affected by any sale, or other disposition of the goods which the buyer may have made, unless the seller has assented thereto. If, however, a negotiable document of title has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the right of any purchaser for value in good faith to whom such document has been negotiated, whether such negotiation be prior or subsequent to the notification to the carrier, or other bailee who issued such document, of the seller's claim to a lien or right of stoppage in transitu.

Action for price.

SEC. 659. ACTION FOR THE PRICE.—1. Where, under a contract to sell or a sale, the property in the goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract or the sale, the seller may maintain an action against him for the price of the goods.

2. Where, under a contract to sell or a sale, the price is payable on a day certain, irrespective of delivery or of transfer of title, and the buyer wrongfully neglects or refuses to pay such price, the seller may maintain an action for the price, although the property in the goods has not passed, and the goods have not been appropriated to

the contract. But it shall be a defense to such an action that the seller at any time before judgment in such action has manifested an inability to perform the contract or the sale on his part or an intention not to perform it.

3. Although the property in the goods has not passed, if they can not readily be resold for a reasonable price, and if the provisions of subdivision four of section 660 are not applicable, the seller may offer to deliver the goods to the buyer, and if the buyer refuses to receive them, may notify the buyer that the goods are thereafter held by the seller as bailee for the buyer. Thereafter the seller may treat the goods as the buyer's and may maintain an action for the price.

For nonacceptance.

SEC. 660. ACTION FOR DAMAGES FOR NONACCEPTANCE OF THE GOODS.—1. Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for nonacceptance.

2. The measure of damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the buyer's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages is, in the absence of special circumstances, showing proximate damage of a greater amount, the difference between the contract price and the market or current price at the time or times when the goods ought to have been accepted, or, if no time was fixed for acceptance, then at the time of the refusal to accept.

4. If, while labor or expense of material amount are necessary on the part of the seller to enable him to fulfill his obligations under the contract to sell or the sale, the buyer repudiates the contract or the sale, or notifies the seller to proceed no further therewith, the buyer shall be liable to the seller for no greater damages than the seller would have suffered if he did nothing toward carrying out the contract or the sale after receiving notice of the buyer's repudiation or countermand. The profit the seller would have made if the contract or the sale had been fully performed shall be considered in estimating such damages.

When seller may rescind.

SEC. 661. WHEN SELLER MAY RESCIND CONTRACT OR SALE.—Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer.

Action for conversion, etc.

SEC. 662. ACTION FOR CONVERTING OR DETAINING GOODS.—Where the property in the goods has passed to the buyer and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain any action allowed by law to the owner of goods of similar kind when wrongfully converted or withheld.

For failure to deliver.

SEC. 663. ACTION FOR FAILING TO DELIVER GOODS.—1. Where the property in the goods has not passed to the buyer, and the seller wrongfully neglects or refuses to deliver the goods, the buyer may maintain an action against the seller for damages for nondelivery.

2. The measure of damages is the loss directly and naturally resulting in the ordinary course of events from the seller's breach of contract.

3. Where there is an available market for the goods in question, the measure of damages, in the absence of special circumstances showing proximate damages of a greater amount, is the difference between the contract price and the market or current price of the goods at the time or times when they ought to have been delivered, or, if no time was fixed, then at the time of the refusal to deliver.

Specific performance.

SEC. 664. SPECIFIC PERFORMANCE.—Where the seller has broken a contract to deliver specific or ascertained goods, a court having the powers of a court of equity may, if it thinks fit, on the application of the buyer, by its judgment or decree, direct that the contract shall be performed specifically, without giving the seller the option of retaining the goods on payment of damages. The judgment or decree may be unconditional, or upon such terms and conditions as to damages, payment of the price and otherwise, as to the court may seem just.

CROSS REFERENCE

Specific performance of obligations generally, see section 1634 et seq. *Post*, p. 1335.

Remedies for breach of warranty.

SEC. 655.[1] REMEDIES FOR BREACH OF WARRANTY.—1. Where there is a breach of warranty by the seller, the buyer may, at his election:

(a) Accept or keep the goods and set up against the seller the breach of warranty by way of recoupment in diminution or extinction of the price;

(b) Accept or keep the goods and maintain an action against the seller for damages for the breach of warranty;

(c) Refuse to accept the goods, if the property therein has not passed, and maintain an action against the seller for damages for the breach of warranty;

(d) Rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid.

2. When the buyer has claimed and been granted a remedy in any one of these ways, no other remedy can thereafter be granted.

3. Where the goods have been delivered to the buyer, he can not rescind the sale if he knew of the breach of warranty when he accepted the goods, or if he fails to notify the seller within a reasonable time of the election to rescind, or if he fails to return or to offer to return the goods to the seller in substantially as good condition as they were in at the time the property was transferred to the buyer. But if deterioration or injury of the goods is due to the breach of warranty, such deterioration or injury shall not prevent the buyer from returning or offering to return the goods to the seller and rescinding the sale.

4. Where the buyer is entitled to rescind the sale and elects to do so, the buyer shall cease to be liable for the price upon returning or offering to return the goods. If the price or any part thereof has already been paid, the seller shall be liable to repay so much thereof as has been paid, concurrently with the return of the goods, or immediately after an offer to return the goods in exchange for repayment of the price.

5. Where the buyer is entitled to rescind the sale and elects to do so, if the seller refuses to acept an offer of the buyer to return the goods, the buyer shall thereafter be deemed to hold the goods as bailee for the seller, but subject to a lien to secure the repayment of any portion of the price which has been paid, and with the remedies for the enforcement of such lien allowed to an unpaid seller by section 649. *Ante*, p. 1215.

6. The measure of damages for breach of warranty is the loss directly and naturally resulting, in the ordinary course of events, from the breach of warranty.

7. In the case of breach of warranty of quality, such loss, in the absence of special circumstances showing proximate damage of a greater amount, is the difference between the value of the goods at

[1] So in original.

the time of delivery to the buyer and the value they would have had if they had answered to the warranty.

Interest and special damages.

SEC. 666. INTEREST AND SPECIAL DAMAGES.—Nothing in this chapter shall affect the right of the buyer or the seller to recover interest or special damages in any case where by law interest or special damages may be recoverable, or to recover money paid where the consideration for the payment of it has failed.

Variation of implied obligations.

SEC. 667. VARIATION OF IMPLIED OBLIGATIONS.—Where any right, duty, or liability would arise under a contract to sell or a sale by implication of law, it may be negatived, or varied by express agreement or by the course of dealing between the parties, or by customs, if the custom be such as to bind both parties to the contract or the sale.

Enforcement of rights.

SEC. 668. RIGHTS MAY BE ENFORCED BY ACTION.—Where any right, duty, or liability is declared by this chapter, it may, unless otherwise by this chapter provided, be enforced by action.

Rule for cases not provided for.

SEC. 669. RULE FOR CASES NOT PROVIDED FOR BY THIS CHAPTER.—In any case not provided for in this chapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepresentation, duress or coercion, mistake, or other invalidating cause, shall continue to apply to contracts to sell and sales of goods.

Provisions not applicable to mortgages.

SEC. 670. PROVISIONS NOT APPLICABLE TO MORTGAGES.—The provisions of this chapter relating to contracts to sell and to sales do not apply, unless so stated, to any transaction in the form of a contract to sell or a sale which is intended to operate by way of mortgage, pledge, charge, or other security.

Definitions.

SEC. 671. DEFINITIONS.—1. In this chapter, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, set-off, and suit in equity.

"Buyer" means a person who buys or agrees to buy goods or any legal successor in interest of such person.

"Defendant" includes a plaintiff against whom a right of set-off or counterclaim is asserted.

"Delivery" means voluntary transfer of possession from one person to another.

"Divisible contract to sell or sale" means a contract to sell or a sale in which by its terms the price for a portion or portions of the goods less than the whole is fixed or ascertainable by computation.

"Document of title to goods" includes any bill of lading, dock warrant, warehouse receipt or order for the delivery of goods, or any other document used in the ordinary course of business in the sale or transfer of goods, as proof of the possession or control of the goods, or authorizing or purporting to authorize the possessor of the document to transfer or receive, either by indorsement or by delivery, goods represented by such document.

"Fault" means wrongful act or default.

"Fungible goods" means goods of which any unit is from its nature or by mercantile usage treated as the equivalent of any other unit.

"Future goods" means goods to be manufactured or acquired by the seller after the making of the contract of sale.

"Goods" includes all chattels personal other than things in action and money. The term includes emblements, industrial growing crops, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

"Order" in sections of this chapter relating to documents of title means an order by indorsement on the document.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

"Plaintiff" includes defendant asserting a right of set-off or counterclaim.

"Property" means the general property in goods, and not merely a special property.

"Purchases" includes taking as a mortgagee or as a pledgee.

"Purchaser" includes mortgagee and pledgee.

"Quality of goods" includes their state or condition.

"Sale" includes a bargain and sale as well as a sale and delivery.

"Seller" means a person who sells or agrees to sell goods, or any legal successor in the interest of such person.

"Specific goods" means goods identified and agreed upon at the time a contract to sell or a sale is made.

2. A thing is done "in good faith" within the meaning of this chapter when it is in fact done honestly, whether it be done negligently or not.

3. A person is insolvent within the meaning of this chapter who either has ceased to pay his debts in the ordinary course of business or can not pay his debts as they become due, whether he has committed an act of bankruptcy or not, and whether he is insolvent within the meaning of the federal bankruptcy law or not.

4. Goods are in a "deliverable state" within the meaning of this chapter when they are in such a state that the buyer would, under the contract, be bound to take delivery of them.

Provisions not retroactive.

SEC. 672. CHAPTER DOES NOT APPLY TO EXISTING SALES OR CONTRACTS TO SELL.—None of the provisions of this chapter shall apply to any sale, or to any contract to sell, made prior to the taking effect of this chapter.

No repeal of warehouse laws. *Post*, p. 1230.

SEC. 673. NO REPEAL OF WAREHOUSE LAWS.—Nothing in this chapter shall be construed to repeal or limit any of the provisions of sections 731 to 784.

CHAPTER 35.—CONDITIONAL SALES

CONDITIONAL SALES.

NOTE.—This chapter was derived from the uniform conditional sales act.

Definitions.

SEC. 674. DEFINITIONS.—In this chapter "conditional sale" means (1) any contract for the sale of goods under which possession is delivered to the buyer and the property in the goods is to vest in the buyer at a subsequent time upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (2) any contract for the bailment or leasing of goods by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value of the goods, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming the owner of such goods upon full compliance with the terms of the contract.

"Buyer" means the person who buys or hires the goods covered by the conditional sale, or any legal successor in interest of such person.

"Goods" means all chattels personal other than things in action and money, and includes emblements, industrial growing crops, and things attached to or forming a part of land which are agreed to be severed before sale or under the conditional sale.

"Performance of the condition" means the occurrence of the event upon which the property in the goods is to vest in the buyer, whether such event is the performance of an act by the buyer or the happening of a contingency.

"Person" includes an individual, partnership, corporation, and any other association.

"Purchase" includes mortgage and pledge.

"Purchaser" includes mortgagee and pledgee.

"Seller" means the person who sells or leases the goods covered by the conditional sale, or any legal successor in interest of such person.

Primary rights of seller.

SEC. 675. PRIMARY RIGHTS OF SELLER.—The buyer shall be liable to the seller for the purchase price, or for installments thereof, as the same shall become due, and for breach of all promises made by him in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

Of buyer.

SEC. 676. PRIMARY RIGHTS OF BUYER.—The buyer shall have the right when not in default to retain possession of the goods, and he shall also have the right to acquire the property in the goods on the performance of the conditions of the contract. The seller shall be liable to the buyer for the breach of all promises and warranties, express or implied, made in the conditional sale contract, whether or not the property in the goods has passed to the buyer.

Validity of conditional sales.

SEC. 677. CONDITIONAL SALES VALID EXCEPT AS OTHERWISE PROVIDED.—Every provision in a conditional sale reserving property in the seller after possession of the goods is delivered to the buyer, shall be valid as to all persons, except as hereinafter otherwise provided.

When void.

SEC. 678. CONDITIONAL SALES VOID AS TO CERTAIN PERSONS.—Every provision in a conditional sale reserving property in the seller shall be void as to any purchaser from or creditor of the buyer, who, without notice of such provision, purchases the goods or acquires by attachment or levy a lien upon them, before the contract or a copy thereof shall be filed as hereinafter provided. This section shall not apply to conditional sales of goods for resale.

Filing of.

SEC. 679. PLACE OF FILING.—The conditional sale contract or a copy thereof shall be filed in the office of the registrar of property of the Canal Zone.

Conditional sale of goods for resale.

SEC. 680. CONDITIONAL SALE OF GOODS FOR RESALE.—When goods are delivered under a conditional sale contract and the seller expressly or impliedly consents that the buyer may resell them prior to performance of the condition, the same shall be valid whether filed or not except that the reservation of property shall be void against purchasers from the buyer in good faith for value and without actual knowledge of the condition of such contract.

Filing.

SEC. 681. FILING.—The registrar of property shall mark upon contract or copy filed with him the day and hour of filing and shall file the contract or copy in his office for public inspection. He shall keep a separate book in which he shall enter the names of the seller and buyer, the date of the contract, the day and hour of filing, a brief description of the goods, the price named in the contract, and the date of cancellation thereof. Such book shall be indexed under the names of both seller and buyer. For filing and entering such contract or copy, or any assignment of such a contract, the registrar shall be entitled to a fee of 50 cents.

Refiling.

SEC. 682. REFILING.—The filing of conditional sale contracts provided for in sections 678 and 679 shall be valid for a period of three years only. The validity of the filing may in each case be extended for successive additional periods of one year from the date of refiling by filing a copy of the original contract within thirty days next preceding the expiration of each period, with a statement attached signed by the seller, showing that the contract is in force and the amount remaining to be paid thereon. Such copy, with

statement attached, shall be filed and entered in the same manner as a contract or copy filed and entered for the first time, and the registrar of property shall be entitled to a like fee as upon the original filing.

Cancellation of contract.

SEC. 683. CANCELLATION OF CONTRACT.—After the performance of the condition, upon written demand delivered personally or by registered mail by the buyer or any other person having an interest in the goods, the seller shall execute, acknowledge, and deliver to the demandant a statement that the condition in the contract has been performed. If for ten days after such demand the seller fails to mail or deliver such a statement of satisfaction, he shall forfeit to the demandant $5 and be liable for all damages suffered. Upon presentation of such statement of satisfaction the registrar of property shall file the same and note the cancellation of the contract and the date thereof on the margin of the page where the contract has been entered. For filing and entering the statement of satisfaction the filing officer shall be entitled to a fee of 25 cents.

Prohibition of removal.

SEC. 684. PROHIBITION OF REMOVAL OR SALE WITHOUT NOTICE.—Unless the contract otherwise provides, the buyer may, without the consent of the seller, remove the goods from the Canal Zone and sell, mortgage, or otherwise dispose of his interest in them; but prior to the performance of the condition, no such buyer shall remove the goods from the Canal Zone, except for temporary uses for a period of not more than thirty days, unless the buyer not less than thirty days before such removal shall give the seller personally or by registered mail written notice of the place to which the goods are to be removed and the approximate time of such intended removal; nor prior to the performance of the conditions shall the buyer sell, mortgage, or otherwise dispose of his interest in the goods, unless he, or the person to whom he is about to sell, mortgage, or otherwise dispose of the same, shall notify the seller in writing personally or by registered mail of the name and address of the person to whom his interest in the goods is about to be sold, mortgaged, or otherwise transferred, not less than ten days before such sale, mortgage, or other disposal. If any buyer does so remove the goods, or does so sell, mortgage, or otherwise dispose of his interest in them without such notice or in violation of the contract, the seller may retake possession of the goods and deal with them as in case of default in payment of part or all of the purchase price.

Sale without notice.

Fraudulent injury, etc.

SEC. 685. FRAUDULENT INJURY, CONCEALMENT, REMOVAL OR SALE.—When, prior to the performance of the condition, the buyer maliciously or with intent to defraud, shall injure, destroy, or conceal the goods, or remove them from the Canal Zone, without having given the notice required by section 684, or shall sell, mortgage, or otherwise dispose of such goods under claim of full ownership, he shall be guilty of a crime and upon conviction thereof shall be imprisoned in jail for not more than one year or be fined not more than $500 or both.

Penalty.

Repossession.

SEC. 686. RETAKING POSSESSION.—When the buyer shall be in default in the payment of any sum due under the contract, or in the performance of any other condition which the contract requires him to perform in order to obtain the property in the goods, or in the performance of any promise, the breach of which is by the contract expressly made a ground for the retaking of the goods, the seller may retake possession thereof. Unless the goods can be retaken without breach of the peace, they shall be retaken by legal process; but nothing herein shall be construed to authorize a violation of the criminal law.

Notice of intention.

SEC. 687. NOTICE OF INTENTION TO RETAKE.—Not more than forty nor less than twenty days prior to the retaking, the seller, if he so desires, may serve upon the buyer personally or by registered mail a notice of intention to retake the goods on account of the buyer's default. The notice shall state the default and the period at the end of which the goods will be retaken, and shall briefly and clearly state what the buyer's rights under this chapter will be in case they are retaken. If the notice is so served and the buyer does not perform the obligations in which he has made default before the day set for retaking, the seller may retake the goods and hold them subject to the provisions of sections 689 to 693 regarding resale, but without any right of redemption.

Redemption.

SEC. 688. REDEMPTION.—If the seller does not give the notice of intention to retake described in section 687, he shall retain the goods for ten days after the retaking within the Canal Zone, during which period the buyer, upon payment or tender of the amount due under the contract at the time of retaking and interest, or upon performance or tender of performance of such other condition as may be named in the contract as precedent to the passage of the property in the goods, or upon performance or tender of performance of any other promise for the breach of which the goods were retaken, and upon payment of the expenses of retaking, keeping, and storage, may redeem the goods and become entitled to take possession of them and to continue in the performance of the contract as if no default had occurred. Upon written demand delivered personally or by registered mail by the buyer, the seller shall furnish to the buyer a written statement of the sum due under the contract and the expense of retaking, keeping, and storage. For failure to furnish such statement within a reasonable time after demand, the seller shall forfeit to the buyer $10 and also be liable to him for all damages suffered because of such failure. If the goods are perishable so that retention for ten days as herein prescribed would result in their destruction or substantial injury, the provisions of this section shall not apply, and the seller may resell the goods immediately upon their retaking.

Compulsory resale.

SEC. 689. COMPULSORY RESALE BY SELLER.—If the buyer does not redeem the goods within ten days after the seller has retaken possession, and the buyer has paid at least 50 per centum of the purchase price at the time of the retaking the seller shall sell them at public auction in the Canal Zone, such sale to be held not more than thirty days after the retaking. The seller shall give to the buyer not less than ten days' written notice of the sale, either personally or by registered mail, directed to the buyer at his last known place of business or residence. The seller shall also give notice of the sale by at least three notices posted in different public places within the Zone, at least five days before the sale. If at the time of the retaking $500 or more has been paid on the purchase price, the seller shall also give notice of the sale at least five days before the sale by publication in a newspaper having a general circulation within the Canal Zone. The seller may bid for the goods at the resale.

Resale at option of parties.

SEC. 690. RESALE AT OPTION OF PARTIES.—If the buyer has not paid at least 50 per centum of the purchase price at the time of the retaking, the seller shall not be under a duty to resell the goods as prescribed in section 689, unless the buyer serves upon the seller, within ten days after the retaking, a written notice demanding a resale, delivered personally or by registered mail. If such notice is served, the resale shall take place within thirty days after the service, in the manner, at the place, and upon the notice prescribed

in section 689. The seller may voluntarily resell the goods for account of the buyer on compliance with the same requirements.

Proceeds of resale.

SEC. 691. PROCEEDS OF RESALE.—The proceeds of the resale shall be applied (1) to the payment of the expenses thereof, (2) to the payment of the expenses of retaking, keeping, and storing the goods, (3) to the satisfaction of the balance due under the contract. Any sum remaining after the satisfaction of such claims shall be paid to the buyer.

Deficiencies.

SEC. 692. DEFICIENCY ON RESALE.—If the proceeds of the resale are not sufficient to defray the expenses thereof, and also the expenses of retaking, keeping, and storing the goods and the balance due upon the purchase price, the seller may recover the deficiency from the buyer, or from any one who has succeeded to the obligations of the buyer.

Rights of parties when no resale.

SEC. 693. RIGHTS OF PARTIES WHERE THERE IS NO RESALE.—Where there is no resale the seller may retain the goods as his own property without obligation to account to the buyer except as provided in section 695, and the buyer shall be discharged of all obligation.

Election of remedies.
Ante, p. 1223.

SEC. 694. ELECTION OF REMEDIES.—After the retaking of possession as provided in section 686 the buyer shall be liable for the price only after a resale and only to the extent provided in section 692. Neither the bringing of an action by the seller for the recovery of the whole or any part of the price, nor the recovery of judgment in such action, nor the collection of a portion of the price, shall be deemed inconsistent with a later retaking of the goods as provided in section 686. But such right of retaking shall not be exercised by the seller after he has collected the entire price or after he has claimed a lien upon the goods, or attached them, or levied upon them as the goods of the buyer.

Recovery of part payments.
Ante, p. 1224.

SEC. 695. RECOVERY OF PART PAYMENTS.—If the seller fails to comply with the provisions of sections 688, 689, 690, 691, and 693, after retaking the goods, the buyer may recover from the seller his actual damages, if any, and in no event less than one-fourth of the sum of all payments which have been made under the contract, with interest.

Waiver of statutory protection.
Ante, p. 1224.

SEC. 696. WAIVER OF STATUTORY PROTECTION.—No act or agreement of the buyer before or at the time of the making of the contract, nor any agreement or statement by the buyer in such contract, shall constitute a valid waiver of the provisions of sections 688, 689, 690, 691, and 695; except that the contract may stipulate that on such default of the buyer as is provided for in section 686, the seller may rescind the conditional sale, either as to all the goods or as to any part thereof for which a specific price was fixed in the contract. If the contract thus provides for rescission, the seller at his option may retake such goods without complying with or being bound by the provisions of sections 687 to 695, inclusive, as to the goods retaken, upon crediting the buyer with the full purchase price of those goods. So much of this credit as is necessary to cancel any indebtedness of the buyer to the seller shall be so applied, and the seller shall repay to the buyer on demand any surplus not so required.

Loss and increase.

SEC. 697. LOSS AND INCREASE.—After the delivery of the goods to the buyer and prior to the retaking of them by the seller, the risk of injury and loss shall rest upon the buyer. The increase of the goods shall be subject to the same conditions as the original goods.

Cases not provided for.

SEC. 698. RULES FOR CASES NOT PROVIDED FOR.—In any case not provided for in this chapter the rules of law and equity, including the law merchant, and in particular those relating to principal and agent and to the effect of fraud, misrepresentation, duress or coercion,

mistake, or other invalidating cause, shall continue to apply to conditional sales.

DEPOSIT IN GENERAL.

CHAPTER 36.—DEPOSIT IN GENERAL

Nature and creation of.

NATURE AND CREATION OF DEPOSIT

Kinds of.

SEC. 699. DEPOSIT, KINDS OF.—A deposit may be voluntary or involuntary; and for safe-keeping or for exchange.

CROSS REFERENCES

Post, p. 1252. Common carriers, see sections 885 et seq.
Deposit for exchange, see section 704.
Post, p. 1229. Deposit for hire, see sections 724 et seq.
Post, p. 1228. Deposit for keeping, see sections 712 et seq.
Post, p. 1229. Gratuitous deposit, and incidents, see sections 720 et seq.
Post, p. 1245. Hiring, see sections 824 et seq.
Post, p. 1240. Innkeepers, see sections 785 and 786.
Post, p. 1243. Loan for exchange, see section 810.
Post, p. 1242. Loan for use, see sections 797 et seq.
Post, p. 1244. Loan of money, see section 815.
Post, p. 1303. Pledge, see sections 1367 et seq.

Voluntary deposit.

SEC. 700. VOLUNTARY DEPOSIT, HOW MADE.—A voluntary deposit is made by one giving to another, with his consent, the possession of personal property to keep for the benefit of the former, or of a third party. The person giving is called the depositor, and the person receiving the depositary.

CROSS REFERENCES

Post, p. 1241. Finder of lost articles, see sections 787 et seq.
Post, p. 1227. Obligations of depositary, see sections 705 et seq.

Involuntary deposit.

SEC. 701. INVOLUNTARY DEPOSIT, HOW MADE.—An involuntary deposit is made:

1. By the accidental leaving or placing of personal property in the possession of any person, without negligence on the part of its owner; or,

2. In cases of fire, shipwreck, inundation, insurrection, riot, or like extraordinary emergencies, by the owner of personal property committing it, out of necessity, to the care of any person.

CROSS REFERENCES

Post, p. 1229. Degree of care requisite, see section 722.
Post, p. 1229. Duties of depositary, when cease, see section 723.
Involuntary deposit in cases of emergency must be accepted, see section 702.
Post, p. 1229. Involuntary deposit is gratuitous, see section 721.

Duty of involuntary depositary.

SEC. 702. DUTY OF INVOLUNTARY DEPOSITARY.—The person with whom a thing is deposited in the manner described in section 701 is bound to take charge of it, if able to do so.

Deposit for keeping.

SEC. 703. DEPOSIT FOR KEEPING, WHAT.—A deposit for keeping is one in which the depositary is bound to return the identical thing deposited.

CROSS REFERENCE

Post, p. 1228. Deposit for keeping, see sections 712 et seq.

For exchange.

SEC. 704. DEPOSIT FOR EXCHANGE, WHAT.—A deposit for exchange is one in which the depositary is only bound to return a thing corresponding in kind to that which is deposited.

CROSS REFERENCES

Deposit for exchange transfers title, see section 796. *Post*, p. 1242.
Loan for exchange, see sections 810 et seq. *Post*, p. 1243.

OBLIGATIONS OF THE DEPOSITARY

Obligations of depositary.

SEC. 705. DEPOSITARY MUST DELIVER ON DEMAND.—A depositary must deliver the thing to the person for whose benefit it was deposited, on demand, whether the deposit was made for a specified time or not, unless he has a lien upon the thing deposited, or has been forbidden or prevented from doing so by the real owner thereof, or by the act of the law, and has given the notice required by section 708.

Delivery on demand.

CROSS REFERENCES

Care required of depositary, see section 725. *Post*, p. 1229.
Delivery, see sections 706 and 710.
For a general lien on personalty dependent upon possession, see section 1393. *Post*, p. 1306.
Lien of innkeepers, see sections 785 et seq. *Post*, p. 1240.
Notice of adverse proceedings, see section 708.

SEC. 706. NO OBLIGATION TO DELIVER WITHOUT DEMAND.—A depositary is not bound to deliver a thing deposited without demand, even where the deposit is made for a specified time.

No obligation to deliver without demand.

SEC. 707. PLACE OF DELIVERY.—A depositary must deliver the thing deposited at his residence or place of business, as may be most convenient for him.

Place of delivery.

CROSS REFERENCE

Delivery on sales, see sections 637 et seq. *Ante*, p. 1212.

SEC. 708. NOTICE TO OWNER OF ADVERSE CLAIM.—A depositary must give prompt notice to the person for whose benefit the deposit was made, of any proceedings taken adversely to his interest in the thing deposited, which may tend to excuse the depositary from delivering the thing to him.

Notice to owner of adverse claim.

SEC. 709. NOTICE TO OWNER OF THING WRONGFULLY DETAINED.—A depositary who believes that a thing deposited with him is wrongfully detained from its true owner, may give him notice of the deposit; and if within a reasonable time afterwards he does not claim it, and sufficiently establish his right thereto, and indemnify the depositary against the claim of the depositor, the depositary is exonerated from liability to the person to whom he gave the notice, upon returning the thing to the depositor, or assuming, in good faith, a new obligation changing his position in respect to the thing, to his prejudice.

Of thing wrongfully detained.

SEC. 710. DELIVERY OF THING OWNED JOINTLY, ETC.—If a thing deposited is owned jointly or in common by persons who can not agree upon the manner of its delivery, the depositary may deliver to each his proper share thereof, if it can be done without injury to the thing.

Delivery of thing owned jointly, etc.

SEC. 711. JOINT DEPOSITS BY MORE THAN ONE PERSON.—When a deposit is made in the name of two or more persons, deliverable or payable to either or to their survivor or survivors, such deposit or any part thereof, or increase thereof, may be delivered or paid to either of said persons or to the survivor or survivors in due course of business.

Joint deposits.

CROSS REFERENCE

Performance to one of joint creditors, see section 448. *Ante*, p. 1185.

DEPOSIT FOR KEEPING.

CHAPTER 37.—DEPOSIT FOR KEEPING

General provisions.

GENERAL PROVISIONS

Indemnification.

SEC. 712. DEPOSITOR MUST INDEMNIFY DEPOSITARY.—A depositor must indemnify the depositary:

1. For all damage caused to him by the defects or vices of the thing deposited; and

2. For all expenses necessarily incurred by him about the thing, other than such as are involved in the nature of the undertaking.

CROSS REFERENCE

Post, p. 1243. Lenders liability for defects in articles borrowed, see section 806.

Obligation of bailee of animals.

SEC. 713. OBLIGATION OF DEPOSITARY OF ANIMALS.—A depositary of living animals must provide them with suitable food and shelter, and treat them kindly.

CROSS REFERENCE

Post, p. 1306. Lien of keepers of livestock, see section 1393.

Use of thing deposited.

SEC. 714. OBLIGATIONS AS TO USE OF THING DEPOSITED.—A depositary may not use the thing deposited, or permit it to be used, for any purpose, without the consent of the depositor. He may not, if it is purposely fastened by the depositor, open it without the consent of the latter, except in case of necessity.

CROSS REFERENCES

Post, p. 1245. Hiring; definition of term, see sections 824 et seq.
Liability for wrongful use, see section 715.

Liability for wrongful use.

SEC. 715. LIABILITY FOR DAMAGE ARISING FROM WRONGFUL USE.—A depositary is liable for any damage happening to the thing deposited, during his wrongful use thereof, unless such damage must inevitably have happened though the property had not been thus used.

Sale of perishables.

SEC. 716. SALE OF THING IN DANGER OF PERISHING.—If a thing deposited is in actual danger of perishing before instructions can be obtained from the depositor, the depositary may sell it for the best price obtainable and retain the proceeds as a deposit, giving immediate notice of his proceedings to the depositor.

CROSS REFERENCE

Post, p. 1230. Sale of perishables, see section 730.

Injury to or loss of thing deposited.

SEC. 717. INJURY TO OR LOSS OF THING DEPOSITED.—If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so far as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

Service rendered by depositary.

Post, pp. 1247–1252.

SEC. 718. SERVICE RENDERED BY DEPOSITARY.—So far as any service is rendered by a depositary, or required from him, his duties and liabilities are prescribed by chapers 41 to 43 of this code on employment and service.

Liability of bailee.

SEC. 719. LIABILITY OF DEPOSITARY.—The liability of a depositary for negligence can not exceed the amount which he is informed by the depositor, or has reason to suppose, the thing deposited to be worth.

GRATUITOUS DEPOSIT

Gratuitous deposit.

SEC. 720. GRATUITOUS DEPOSIT, WHAT.—Gratuitous deposit as[1] a deposit for which the depositary receives no consideration beyond the mere possession of the thing deposited.

Definition.

CROSS REFERENCE

Degree of care necessary, see section 722.

SEC. 721. NATURE OF INVOLUNTARY DEPOSIT.—An involuntary deposit is gratuitous, the depositary being entitled to no reward.

Nature of involuntary deposit.

CROSS REFERENCE

Involuntary deposit, defined, see section 701. *Ante*, p. 1226.

SEC. 722. DEGREE OF CARE REQUIRED OF GRATUITOUS DEPOSITARY.—A gratuitous depositary must use, at least, slight care for the preservation of the thing deposited.

Degree of care, gratuitious depositary.

SEC. 723. HIS DUTIES CEASE, WHEN.—The duties of a gratuitous depositary cease:

When duties cease.

1. Upon his restoring the thing deposited to its owner; or,

2. Upon his giving reasonable notice to the owner to remove it, and the owner failing to do so within a reasonable time. But an involuntary depositary, under subdivision two of section 701, can not give such notice until the emergency which gave rise to the deposit is past. *Ante*, p. 1226.

STORAGE

Storage.

SEC. 724. DEPOSIT FOR HIRE.—A deposit not gratuitous is called storage. The depositary in such case is called a depositary for hire.

Deposit for hire.

CROSS REFERENCES

Hiring, in general, see section 824. *Post*, p. 1245.
Warehousemen, see sections 731 et seq. *Post*, p. 1230.

SEC. 725. DEGREE OF CARE REQUIRED OF DEPOSITARY FOR HIRE.—A depositary for hire must use at least ordinary care for the preservation of the thing deposited.

Degree of care, depositary for hire.

CROSS REFERENCES

Care required of a hirer, see section 827. *Post*, p. 1245.
Common carriers, see sections 891, 897, and 975. *Post*, pp. 1253, 1257.
Liability of warehousemen, see sections 901 and 902. *Post*, p. 1254.

SEC. 726. RATE OF COMPENSATION FOR FRACTION OF WEEK, ETC.—In the absence of a different agreement or usage, a depositary for hire is entitled to one week's hire for the sustenance and shelter of living animals during any fraction of a week, and to half a month's hire for the storage of any other property during any fraction of a half-month.

Compensation for fraction of week, etc.

SEC. 727. TERMINATION OF DEPOSIT.—In the absence of an agreement as to the length of time during which a deposit is to continue, it may be terminated by the depositor at any time, and by the depositary upon reasonable notice.

Termination of deposit.

SEC. 728. SAME.—Notwithstanding an agreement respecting the length of time during which a deposit is to continue, it may be terminated by the depositor on paying all that would become due to the depositary in case of the deposit so continuing.

[1] So in original.

Lien for storage charges, etc.

SEC. 729. LIEN FOR STORAGE CHARGES, ADVANCES, INSURANCE, AND EXPENSES.—A depositary for hire has a lien for storage charges and for advances and insurance incurred at the request of the depositor, and for money necessarily expended in and about the care, preservation, and keeping of the property stored, and he also has a lien for money advanced at the request of the depositor, to discharge a prior lien, and for the expenses of a sale where default has been made in satisfying a valid lien. The rights of the depositary for hire to such iien are regulated by chapters 62 et seq. of this code, on liens: *Provided, however*, That such lien may be enforced in the manner provided by sections 759, 761, and 762 of this code, relating to warehousemen.

Post, p. 1296.

Proviso. Enforcement.

Post, p. 1235.

Storage property to be sold.

SEC. 730. STORAGE PROPERTY TO BE SOLD.—If from any cause other than want of ordinary care and diligence on his part, a depositary for hire is unable to deliver perishable property, baggage, or luggage received by him for storage, or to collect his charges for storage due thereon, he may cause such property to be sold to satisfy his lien for storage in accordance with the provisions of sections 759 to 762 of this code relating to warehousemen.

Post, p. 1235.

CROSS REFERENCES

Post, p. 1305. Sale by pledgee, see sections 1381 et seq.

Post, p. 1299. Sale extinguishes lien, see section 1330.

Ante, p. 1228. Sale of perishables, see section 716.

Post, p. 1307. Sale of personalty to enforce, see section 1395.

Warehousemen, see sections 731 et seq.

Warehousemen.

WAREHOUSEMEN

CROSS REFERENCE

Ante, p. 1221. Nothing in Sales Act to be construed to repeal or limit this subchapter, see section 673.

Persons who may issue receipts.

SEC. 731. PERSONS WHO MAY ISSUE RECEIPTS.—Warehouse receipts may be issued by any warehouseman.

Form of.

SEC. 732. FORM OF RECEIPTS.—Warehouse receipts need not be in any particular form, but every such receipt must embody within its written or printed terms:

(a) The location of the warehouse where the goods are stored;

(b) The date of issue of the receipt;

(c) The consecutive number of the receipt;

(d) A statement whether the goods received will be delivered to the bearer, to a specified person, or to a specified person or his order;

(e) The rate of storage charges;

(f) A description of the goods or of the packages containing them;

(g) The signature of the warehouseman, which may be made by his authorized agent;

(h) If the receipt is issued for goods of which the warehouseman is owner, either solely or jointly or in common with others, the fact of such ownership; and

(i) A statement of the amount of advances made and of liabilities incurred for which the warehouseman claims a lien. If the precise amount of such advances made or of such liabilities incurred is, at the time of the issue of the receipt, unknown to the warehouseman or to his agent who issues it, a statement of the fact that advances have been made or liabilities incurred and the purpose thereof is sufficient.

A warehouseman shall be liable to any person injured thereby, for all damage caused by the omission from a negotiable receipt of any of the foregoing terms.

A warehouseman may insert in a receipt, issued by him, any other terms and conditions, provided that such terms and conditions shall not:

(a) Be contrary to the provisions of this subchapter.

(b) In anywise impair his obligation to exercise that degree of care in the safe-keeping of the goods intrusted to him which a reasonably careful man would exercise in regard to similar goods of his own.

Negotiable and nonnegotiable receipts.

SEC. 733. NEGOTIABLE AND NONNEGOTIABLE RECEIPTS.—A receipt in which it is stated that the goods received will be delivered to the depositor, or to any other specified person, is a nonnegotiable receipt.

A receipt in which it is stated that the goods received will be delivered to the bearer or to the order of any person named in such receipt is a negotiable receipt. No provision shall be inserted in a negotiable receipt that it is nonnegotiable. Such provision, if inserted, shall be void.

Duplicate receipts must be marked.

SEC. 734. DUPLICATE RECEIPTS MUST BE SO MARKED.—When more than one negotiable receipt is issued for the same goods, the word "duplicate" shall be plainly placed upon the face of every such receipt, except the one first issued. A warehouseman shall be liable for all damage caused by his failure so to do to any one who purchased the subsequent receipt for value supposing it to be an original, even though the purchase be after the delivery of the goods by the warehouseman to the holder of the original receipt.

Failure to mark "not negotiable."

SEC. 735. FAILURE TO MARK "NOT NEGOTIABLE."—A nonnegotiable receipt shall have plainly placed upon its face by the warehouseman issuing it "nonnegotiable" or "not negotiable." In case of the warehouseman's failure so to do, a holder of the receipt who purchased it for value supposing it to be negotiable may, at his option, treat such receipt as imposing upon the warehouseman the same liabilities he would have incurred had the receipt been negotiable. This section shall not apply, however, to letters, memoranda, or written acknowledgments of an informal character.

Obligation to deliver.

SEC. 736. OBLIGATION OF WAREHOUSEMAN TO DELIVER.—A warehouseman, in the absence of some lawful excuse provided by this subchapter, is bound to deliver the goods upon a demand made either by the holder of a receipt for the goods or by the depositor, if such demand is accompanied with:

(a) An offer to satisfy the warehouseman's lien;

(b) An offer to surrender the receipt if negotiable, with such indorsement as would be necessary for the negotiation of the receipt; and

(c) A readiness and willingness to sign, when the goods are delivered, and acknowledgment that they have been delivered, if such signature is requested by the warehouseman.

In case the warehouseman refuses or fails to deliver the goods in compliance with a demand by the holder or depositor so accompanied, the burden shall be upon the warehouseman to establish the existence of a lawful excuse for such refusal.

When delivery justified.

SEC. 737. JUSTIFICATION OF WAREHOUSEMAN IN DELIVERING.—A warehouseman is justified in delivering the goods, subject to the provisions of sections 738 to 740, to one who is:

Post, p. 1232.

(a) The person lawfully entitled to the possession of the goods, or his agent;

(b) A person who is either himself entitled to delivery by the terms of a nonnegotiable receipt issued for the goods, or who has

written authority from the person so entitled either indorsed upon the receipt or written upon another paper; or

(c) A person in possession of a negotiable receipt by the terms of which the goods are delivered to him or order or to bearer, or which has been indorsed to him or in blank by the person to whom delivery was promised by the terms of the receipt or by his mediate or immediate indorsee.

Liability for misdelivery.

SEC. 738. WAREHOUSEMAN'S LIABILITY FOR MISDELIVERY.—Where a warehouseman delivers the goods to one who is not in fact lawfully entitled to the possession of them, the warehouseman shall be liable as for conversion to all having a right of property or possession in the goods if he delivered the goods otherwise than as authorized by subdivisions (b) and (c) of section 737 and though he delivered the goods as authorized by said subdivisions he shall be so liable, if prior to such delivery he had either—

(a) Been requested, by or on behalf of the person lawfully entitled to a right of property or possession in the goods, not to make such delivery; or

(b) Had information that the delivery about to be made was to one not lawfully entitled to the possession of the goods.

Cancellation of negotiable receipts.

SEC. 739. NEGOTIABLE RECEIPTS MUST BE CANCELED OR MARKED WHEN GOODS OR PART THEREOF ARE DELIVERED.—Except as provided in section 762, where a warehouseman delivers goods for which he had issued a negotiable receipt, the negotiation of which would transfer the right to the possession of the goods, and fails to take up and cancel the receipt, he shall be liable to anyone who purchases for value in good faith such receipt, for failure to deliver the goods to him, whether such purchaser acquired title to the receipt before or after the delivery of the goods by the warehouseman.

Post, p. 1236.

Except as provided in said section 762, where a warehouseman delivers part of the goods for which he had issued a negotiable receipt and fails either to take up and cancel such receipt, or to place plainly upon it a statement of what goods or packages have been delivered he shall be liable, to anyone who purchases for value in good faith such receipt, for failure to deliver all the goods specified in the receipt, whether such purchaser acquired title to the receipt before or after the delivery of any portion of the goods by the warehouseman.

Altered receipts.

SEC. 740. ALTERED RECEIPTS.—The alteration of a receipt shall not excuse the warehouseman who issued it from any liability if such alteration was

(a) Immaterial;

(b) Authorized; or

(c) Made without fraudulent intent.

Liability thereon.

If the alteration was authorized, the warehouseman shall be liable according to the terms of the receipt as altered. If the alteration was unauthorized, but made without fraudulent intent, the warehouseman shall be liable according to the terms of the receipt, as they were before alteration. Material and fraudulent alteration of a receipt shall not excuse the warehouseman who issued it from liability to deliver, according to the terms of the receipt as originally issued, the goods for which it was issued, but shall excuse him from any other liability to the person who made the alteration and to any person who took with notice of the alteration. Any purchaser of the receipt for value without notice of the alteration shall acquire the same rights against the warehouseman which such purchaser would have acquired if the receipt had not been altered at the time of the purchase.

Lost and destroyed receipts.

SEC. 741. LOST OR DESTROYED RECEIPTS.—Where a negotiable receipt has been lost or destroyed, a court of competent jurisdiction may order the delivery of the goods upon satisfactory proof of such loss or destruction and upon the giving of a bond with sufficient sureties to be approved by the court to protect the warehouseman from any liability or expense, which he or any person injured by such delivery may incur by reason of the original receipt remaining outstanding. The court may also in its discretion order the payment of the warehouseman's reasonable costs and counsel fees. The delivery of the goods under an order of the court as provided in this section shall not relieve the warehouseman from liability to a person to whom the negotiable receipt has been or shall be negotiated for value without notice of the proceedings or of the delivery of the goods.

Effect of duplicate receipts.

SEC. 742. EFFECT OF DUPLICATE RECEIPTS.—A receipt upon the face of which the word "duplicate" is plainly placed is a representation and warranty by the warehouseman that such receipt is an accurate copy of an original receipt properly issued and uncanceled at the date of the issue of the duplicate, but shall impose upon him no other liability.

Warehouseman can not set up title in himself.

SEC. 743. WAREHOUSEMAN CAN NOT SET UP TITLE IN HIMSELF.—No title or right to the possession of the goods, on the part of the warehouseman, unless such title or right is derived directly or indirectly from a transfer made by the depositor at the time of or subsequent to the deposit for storage, or from the warehouseman's lien, shall excuse the warehouseman from liability for refusing to deliver the goods according to the terms of the receipt.

Interpleader when adverse claimants.

SEC. 744. INTERPLEADER OF ADVERSE CLAIMANTS.—If more than one person claim the title or possession of the goods, the warehouseman may, either as a defense to an action brought against him for nondelivery of the goods, or as an original suit, whichever is appropriate, require all known claimants to interplead.

Time to determine validity of claims.

SEC. 745. WAREHOUSEMAN HAS REASONABLE TIME TO DETERMINE VALIDITY OF CLAIMS.—If some one other than the depositor or person claiming under him has a claim to the title or possession of the goods, and the warehouseman has information of such claim, the warehouseman shall be excused from liability for refusing to deliver the goods, either to the depositor or person claiming under him or to the adverse claimant, until the warehouseman has had a reasonable time to ascertain the validity of the adverse claim or to bring legal proceedings to compel all claimants to interplead.

Adverse title as defense.

SEC. 746. ADVERSE TITLE IS NO DEFENSE EXCEPT AS ABOVE PROVIDED.—Except as provided in sections 744 and 745 and in sections 737 and 762, no right or title of a third person shall be a defense to an action brought by the depositor or person claiming under him against the warehouseman for failure to deliver the goods according to the terms of the receipt.

Ante, p. 1231; *post*, p. 1236.

Liability for nonexistence or misdescription of goods.

SEC. 747. LIABILITY FOR NONEXISTENCE OR MISDESCRIPTION OF GOODS.—A warehouseman shall be liable to the holder of a receipt, issued by him or on his behalf by an agent or employee the scope of whose actual or apparent authority includes the issuing of warehouse receipts, for damages caused by the nonexistence of the goods or by the failure of the goods to correspond with the description thereof in the receipt at the time of its issue. If, however, the goods are described in a receipt merely by a statement of marks or labels upon them, or upon packages containing them, or by a statement that the goods are said to be goods of a certain kind, or that the packages containing the goods are said to contain goods of a certain kind, or by words of like purport, such statements, if true, shall not make liable the warehouseman issuing the receipt, although the goods are

not of the kind which the marks or labels upon them indicate, or of the kind they were said to be by the depositor.

For care of goods.

SEC. 748. LIABILITY FOR CARE OF GOODS.—A warehouseman shall be liable for any loss or injury to the goods caused by his failure to exercise such care in regard to them as a reasonably careful owner of similar goods would exercise, but he shall not be liable, in the absence of an agreement to the contrary, for any loss or injury to the goods which could not have been avoided by the exercise of such care.

Goods must be kept separate.

SEC. 749. GOODS MUST BE KEPT SEPARATE.—Except as provided in section 750, a warehouseman shall keep the goods so far separate from goods of other depositors, and from other goods of the same depositor for which a separate receipt has been issued, as to permit at all times the identification and redelivery of the goods deposited.

Commingled goods.

SEC. 750. COMMINGLED GOODS AND WAREHOUSEMAN'S LIABILITY THEREFOR.—If authorized by agreement or by custom, a warehouseman may mingle fungible goods with other goods of the same kind and grade. In such case the various depositors of the mingled goods shall own the entire mass in common, and each depositor shall be entitled to such portion thereof as the amount deposited by him bears to the whole.

Liability.

The warehouseman shall be severally liable to each depositor for the care and redelivery of his share of such mass to the same extent and under the same circumstances as if the goods had been kept separate.

Attachment or levy upon goods for which a negotiable receipt has been issued.

SEC. 751. ATTACHMENT OR LEVY UPON GOODS FOR WHICH A NEGOTIABLE RECEIPT HAS BEEN ISSUED.—If goods are delivered to a warehouseman by the owner or by a person whose act in conveying the title to them to a purhcaser [1] in good faith for value would bind the owner, and a negotiable receipt is issued for them, they can not thereafter, while in the possession of the warehouseman, be attached by garnishment or otherwise, or be levied upon under an execution, unless the receipt be first surrendered to the warehouseman, or its negotiation enjoined. The warehouseman shall in no case be compelled to deliver up the actual possession of the goods until the receipt is surrendered to him or impounded by the court.

Creditors remedies, negotiable receipts.

SEC. 752.—CREDITORS REMEDIES TO REACH NEGOTIABLE RECEIPTS.—A creditor whose debtor is the owner of a negotiable receipt shall be entitled to such aid from courts of appropriate jurisdiction, by injunction and otherwise, in attaching such receipt or in satisfying the claim by means thereof as is allowed at law or in equity, in regard to property which can not readily be attached or levied upon by ordinary legal process.

Claims included in warehouseman's lien.

Post, p. 1235.

SEC. 753. WHAT CLAIMS ARE INCLUDED IN THE WAREHOUSEMAN'S LIEN.—Subject to the provisions of section 756, a warehouseman shall have a lien on goods deposited or on the proceeds thereof in his hands, for all lawful charges for storage and preservation of the goods; also for all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, coopering and other charges and expenses in relation to such goods; also for all reasonable charges and expenses for notice, and advertisements of sale, and for sale of the goods where default has been made in satisfying the warehouseman's lien.

Against what property lien may be enforced.

SEC. 754. AGAINST WHAT PROPERTY THE LIEN MAY BE ENFORCED.—Subject to the provisions of section 756, a warehouseman's lien may be enforced:

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[1] So in original.

(a) Against all goods, whenever deposited, belonging to the person who is liable as debtor for the claims in regard to which the lien is asserted; and

(b) Against all goods belonging to others which have been deposited at any time by the person who is liable as debtor for the claims in regard to which the lien is asserted, if such person had been so intrusted with the possession of the goods that a pledge of the same by him at the time of the deposit to one who took the goods in good faith for value would have been valid.

Loss of lien.

SEC. 755. HOW THE LIEN MAY BE LOST.—A warehouseman loses his lien upon goods:

(a) By surrendering possession thereof; or

(b) By refusing to deliver the goods when a demand is made with which he is bound to comply under the provisions of this subchapter.

Negotiable receipt must state charges for which lien is claimed.

SEC. 756. NEGOTIABLE RECEIPT MUST STATE CHARGES FOR WHICH LIEN IS CLAIMED.—If a negotiable receipt is issued for goods, the warehouseman shall have no lien thereon, except for charges for storage of those goods subsequent to the date of the receipt, unless the receipt expressly enumerates other charges for which a lien is claimed. In such case there shall be a lien for the charges enumerated so far as they are within the terms of section 753, although the amount of the charges so enumerated is not stated in the receipt.

Ante, p. 1234.

Delivery not required until lien satisfied.

SEC. 757. WAREHOUSEMAN NEED NOT DELIVER UNTIL LIEN IS SATISFIED.—A warehouseman having a lien valid against the person demanding the goods may refuse to deliver the goods to him until the lien is satisfied.

Lien does not preclude other remedies.

SEC. 758. WAREHOUSEMAN'S LIEN DOES NOT PRECLUDE OTHER REMEDIES.—Whether a warehouseman has or has not a lien upon the goods, he is entitled to all remedies allowed by law to a creditor against his debtor for the collection from the depositor of all charges and advances which the depositor has expressly or impliedly contracted with the warehouseman to pay.

Satisfaction of lien by sale.

SEC. 759. SATISFACTION OF LIEN BY SALE.—A warehouseman's lien for a claim which has become due may be satisfied as follows: The warehouseman shall give a written notice to the person on whose account the goods are held, and to any other person known by the warehouseman to claim an interest in the goods. Such notice shall be given by delivery in person or by registered letter addressed to the last known place of business or abode of the person to be notified. The notice shall contain:

Notice to interested parties.

Contents.

(a) An itemized statement of the warehouseman's claim, showing the sum due at the time of the notice and the date or dates when it became due;

(b) A brief description of the goods against which the lien exists;

(c) A demand that the amount of the claim as stated in the notice, and of such further claim as shall accrue, shall be paid on or before a day mentioned, not less than ten days from the delivery of the notice if it is personally delivered, or from the time when the notice should reach its destination, according to the due course of post, if the notice is sent by mail; and

(d) A statement that unless the claim is paid within the time specified the goods will be advertised for sale and sold by auction at a specified time and place.

At auction.

In accordance with the terms of a notice so given, a sale of the goods by auction may be had to satisfy any valid claim of the warehouseman for which he has a lien on the goods. The sale shall be had in the place where the lien was acquired, or, if such a place is manifestly unsuitable for the purpose, at the nearest suitable place.

Notice of auction.

After the time for the payment of the claim specified in the notice to the depositor has elapsed, a notice of the sale, describing the goods to be sold, and stating the name of the owner or person on whose account the goods are held, and the time and place of the sale, shall be posted for two consecutive weeks on the bulletin board of each post office of the Canal Zone. The sale shall not be held less than fifteen days from the time when such notices were posted. From the proceeds of such sale the warehouseman shall satisfy his lien, including the reasonable charges of notice and sale. The balance, if any, of such proceeds shall be held by the warehouseman, and delivered on demand to the person to whom he would have been bound to deliver or justified in delivering the goods: *Provided*, *however*, That in case any such balance shall not be claimed by the rightful owner within one month from the day of said sale, the same shall be paid to the collector of the Panama Canal; and if the same be not claimed by the owner thereof or his legal representatives within one year thereafter, the same shall be covered into the Treasury of the United States as miscellaneous receipts. At any time before the goods are so sold any person claiming a right of property or possession therein may pay the warehouseman the amount necessary to satisfy his lien and to pay the reasonable expenses and liabilities incurred in serving and posting notices and preparing for the sale up to the time of such payment. The warehouseman shall deliver the goods to the person making such payment if he is a person entitled, under the provisions of this subchapter, to the possession of the goods on payment of the charges thereon. Otherwise the warehouseman shall retain possession of the goods according to the terms of the original contract of deposit.

Proviso.
Disposition of unclaimed balance.

Perishable and hazardous goods.

SEC. 760. PERISHABLE AND HAZARDOUS GOODS.—If goods are of a perishable nature, or by keeping will deteriorate greatly in value, or by their odor, leakage, inflammability, or explosive nature will be liable to injure other property, the warehouseman may give such notice to the owner, or to the person in whose name the goods are stored, as is reasonable and possible under the circumstances, to satisfy the lien upon such goods and to remove them from the warehouse, and in the event of the failure of such person to satisfy the lien and to remove the goods within the time so specified, the warehouseman may sell the goods at public or private sale without posting notices. If the warehouseman after a reasonable effort is unable to sell such goods, he may dispose of them in any lawful manner, and shall incur no liability by reason thereof. The proceeds of any sale made under the terms of this section shall be disposed of in the same way as the proceeds of sales made under the terms of section 759.

Other methods of enforcing liens.

SEC. 761. OTHER METHODS OF ENFORCING LIENS.—The remedy for enforcing a lien herein provided does not preclude any other remedies allowed by law for the enforcement of a lien against personal property nor bar the right to recover so much of the warehouseman's claim as shall not be paid by the proceeds of the sale of the property.

Effect of sale.

SEC. 762. EFFECT OF SALE.—After goods have been lawfully sold to satisfy a warehouseman's lien, or have been lawfully sold or disposed of because of their perishable or hazardous nature, the warehouseman shall not thereafter be liable for failure to deliver the goods to the depositor, or owner of the goods, or to a holder of the receipt given for the goods when they were deposited, even if such receipt be negotiable.

Negotiation of receipts by delivery.

SEC. 763. NEGOTIATION OF NEGOTIABLE RECEIPTS BY DELIVERY AND BY INDORSEMENT.—A negotiable receipt may be negotiated by delivery:

(a) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the bearer; or

(b) Where, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of a specified person, and such person or a subsequent indorsee of the receipt has indorsed it in blank or to bearer.

Where, by the terms of a negotiable receipt, the goods are deliverable to bearer or where a negotiable receipt has been indorsed in blank or to bearer, any holder may indorse the same to himself or to any other specified person, and in such case the receipt shall thereafter be negotiated only by the indorsement of such indorsee.

By indorsement.

A negotiable receipt may be negotiated by the indorsement of the person to whose order the goods are, by the terms of the receipt, deliverable. Such indorsement may be in blank, to bearer or to a specified person. If indorsed to a specified person, it may be again negotiated by the indorsement of such person in blank, to bearer or to another specified person. Subsequent negotiation may be made in like manner.

Transfer of.

SEC. 764. TRANSFER OF RECEIPTS.—A receipt which is not in such form that it can be negotiated by delivery may be transferred by the holder by delivery to a purchaser or donee. A nonnegotiable receipt can not be negotiated, and the indorsement of such a receipt gives the transferee no additional right.

Who may negotiate.

SEC. 765. WHO MAY NEGOTIATE A RECEIPT.—A negotiable receipt may be negotiated:

By any person in possession of the same, however such possession may have been acquired, if, by the terms of the receipt, the warehouseman undertakes to deliver the goods to the order of such person or if at the time of negotiation the receipt is in such form that it may be negotiated by delivery.

Rights of person to whom negotiated.

SEC. 766. RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN NEGOTIATED.—A person to whom a negotiable receipt has been duly negotiated acquires thereby:

(a) Such title to the goods as the person negotiating the receipt to him had or had ability to convey to a purchaser in good faith for value, and also such title to the goods as the depositor or person to whose order the goods were to be delivered by the terms of the receipt had or had ability to convey to a purchaser in good faith for value; and

(b) The direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt as fully as if the warehouseman had contracted directly with him.

To whom transferred.

SEC. 767. RIGHTS OF PERSON TO WHOM A RECEIPT HAS BEEN TRANSFERRED.—A person to whom a receipt has been transferred but not negotiated acquires thereby, as against the transferor, the title to the goods, subject to the terms of any agreement with the transferor. If the receipt is nonnegotiable, such person also acquires the right to notify the warehouseman of the transfer to him of such receipt, and thereby to acquire the direct obligation of the warehouseman to hold possession of the goods for him according to the terms of the receipt. Prior to the notification of the warehouseman by the transferor or transferee of a nonnegotiable receipt, the title of the transferee to the goods and the right to acquire the obligation of the warehouseman may be defeated by the levy of an attachment or execution upon the goods by a creditor of the transferor, or by a notification to the warehouseman by the transferor, or a subsequent purchaser from the transferor of a subsequent sale of the goods by the transferor.

Transfer without indorsement.

SEC. 768. TRANSFER OF NEGOTIABLE RECEIPT WITHOUT INDORSEMENT.—Where a negotiable receipt is transferred for value by delivery, and the indorsement of the transferor is essential for negotiation, the transferee acquires a right against the transferor to compel him to indorse the receipt, unless a contrary intention appears. The negotiation shall take effect as of the time when the indorsement is actually made.

Warranties of transferor, etc.

SEC. 769. WARRANTIES ON SALE OF RECEIPT.—A person who for value negotiates or transfers a receipt by indorsement or delivery, including one who assigns for value a claim secured by a receipt, unless a contrary intention appears, warrants:

(a) That the receipt is genuine;

(b) That he has a legal right to negotiate or transfer it;

(c) That he has knowledge of no fact which would impair the validity or worth of the receipt; and

(d) That he has a right to transfer the title to the goods, and that the goods are merchantable or fit for a particular purpose whenever such warranties would have been implied, if the contract of the parties had been to transfer without a receipt the goods represented thereby.

Indorser not a guarantor.

SEC. 770. INDORSER NOT A GUARANTOR.—The indorsement of a receipt shall not make the indorser liable for any failure on the part of the warehouseman or previous indorsers of the receipt to fulfill their respective obligations.

No warranty implied from accepting payment of a debt.

SEC. 771. NO WARRANTY IMPLIED FROM ACCEPTING PAYMENT OF A DEBT.—A mortgagee, pledgee, or holder for security of a receipt who in good faith demands or receives payment of the debt for which such receipt is security, whether from a party to a draft drawn for such debt or from any other person, shall not by so doing be deemed to represent or to warrant the genuineness of such receipt or the quantity or quality of the goods therein described.

Effect of fraud, etc., on negotiation.

SEC. 772. WHEN NEGOTIATION NOT IMPAIRED BY FRAUD, MISTAKE, OR DURESS.—The validity of the negotiation of a receipt is not impaired by the fact that such negotiation was a breach of duty on the part of the person making the negotiation, or by the fact that the owner of the receipt was deprived of the possession of the same by loss, theft, fraud, accident, mistake, duress, or conversion, if the person to whom the receipt was negotiated, or a person to whom the receipt was subsequently negotiated, paid value therefor, in good faith, without notice of the breach of duty, or loss, theft, fraud, accident, mistake, duress, or conversion.

Subsequent negotiations.

SEC. 773. SUBSEQUENT NEGOTIATION.—Where a person having sold, mortgaged, or pledged goods which are in a warehouse and for which a negotiable receipt has been issued, or having sold, mortgaged, or pledged the negotiable receipt representing such goods, continues in possession of the negotiable receipt, the subsequent negotiation thereof by that person under any sale, or other disposition thereof to any person receiving the same in good faith, for value and without notice of the previous sale, mortgage, or pledge, shall have the same effect as if the first purchaser of the goods or receipt had expressly authorized the subsequent negotiation.

Negotiation defeats vendor's lien.

SEC. 774. NEGOTIATION DEFEATS VENDOR'S LIEN.—Where a negotiable receipt has been issued for goods, no seller's lien or right of stoppage in transitu shall defeat the rights of any purchaser for value in good faith to whom such receipt has been negotiated, whether such negotiation be prior or subsequent to the notification to the warehouseman who issued such receipt of the seller's claim to a lien or right of stoppage in transitu. Nor shall the warehouseman be obliged to deliver or be justified in delivering the goods to

an unpaid seller unless the receipt is first surrendered for cancellation.

Issue of receipt for goods not received.

SEC. 775. ISSUE OF RECEIPT FOR GOODS NOT RECEIVED.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a receipt knowing that the goods for which such receipt is issued have not been actually received by such warehouseman, or are not under his actual control at the time of issuing such receipt, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Penalties.

Issue of receipt containing false statement.

SEC. 776. ISSUE OF RECEIPT CONTAINING FALSE STATEMENT.—A warehouseman, or any officer, agent, or servant of a warehouseman, who fraudulently issues or aids in fraudulently issuing a receipt for goods knowing that it contains any false statement, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Duplicate receipts.

SEC. 777. ISSUE OF DUPLICATE RECEIPTS NOT SO MARKED.—A warehouseman, or any officer, agent, or servant of a warehouseman, who issues or aids in issuing a duplicate or additional negotiable receipt for goods knowing that a former negotiable receipt for the same goods or any part of them is outstanding and uncanceled, without plainly placing upon the face thereof the word "Duplicate," except in the case of a lost or destroyed receipt after proceedings as provided for in section 741, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Ante, p. 1233.

When warehouseman has a title therein.

SEC. 778. ISSUE FOR WAREHOUSEMAN'S GOODS OF RECEIPTS WHICH DO NOT STATE THAT FACT.—Where there are deposited with or held by a warehouseman goods of which he is owner, either solely or jointly or in common with others, such warehouseman, or any of his officers, agents, or servants who, knowing this ownership, issues or aids in issuing a negotiable receipt for such goods which does not state such ownership, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Delivery without obtaining negotiable receipt.

SEC. 779. DELIVERY OF GOODS WITHOUT OBTAINING NEGOTIABLE RECEIPT.—A warehouseman, or any officer, agent, or servant of a warehouseman who delivers goods out of the possession of such warehouseman, knowing that a negotiable receipt the negotiation of which would transfer the right to the possession of such goods is outstanding and uncanceled, without obtaining the possession of such receipt at or before the time of such delivery, shall, except in the cases provided for in sections 741 and 762, be found guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Ante, pp. 1233, 1236.

Negotiation of receipt for mortgaged goods.

SEC. 780. NEGOTIATION OF RECEIPT FOR MORTGAGED GOODS.—Any person who deposits goods to which he has not title, or upon which there is a lien or mortgage, and who takes for such goods a negotiable receipt which he afterwards negotiates for value with intent to deceive and without disclosing his want of title or the existence of the lien or mortgage, shall be guilty of a crime, and upon conviction shall be punished for each offense by imprisonment in jail not exceeding one year, or by a fine not exceeding $1,000, or by both.

Rules of common law applicable.

SEC. 781. WHEN RULES OF COMMON LAW STILL APPLICABLE.—In any case not provided for in this subchapter, the rules of law and equity, including the law merchant, and in particular the rules relating to the law of principal and agent and to the effect of fraud, misrepre-

sentation, duress, or coercion, mistake, or other invalidating cause, shall govern.

Definitions.

SEC. 783. DEFINITIONS.—(1) In this subchapter, unless the context or subject matter otherwise requires:

"Action" includes counterclaim, set-off, and suit in equity.

"Delivery" means voluntary transfer of possession from one person to another.

"Fungible goods" means goods of which any unit is, from its nature or by mercantile custom, treated as the equivalent of any other unit.

"Goods" means chattels or merchandise in storage, or which has been or is about to be stored.

"Holder" of a receipt means a person who has both actual possession of such receipt and a right of property therein.

"Order" means an order by indorsement on the receipt.

"Owner" does not include mortgagee or pledgee.

"Person" includes a corporation or partnership or two or more persons having a joint or common interest.

To "purchase" includes to take as mortgagee or as pledgee.

"Purchaser" includes mortgagee and pledgee.

"Receipt" means a warehouse receipt.

"Value" is any consideration sufficient to support a simple contract. An antecedent or preexisting obligation, whether for money or not, constitutes value where a receipt is taken either in satisfaction thereof or as security therefor.

"Warehouseman" means a person lawfully engaged in the business of storing goods for profit.

(2) A thing is done "in good faith" within the meaning of this subchapter, when it is in fact done honestly, whether it be done negligently or not.

Provisions not retroactive.

SEC. 784. APPLICATION TO EXISTING RECEIPTS.—The provisions of this subchapter do not apply to receipts made and delivered prior to the taking effect of this subchapter.

Innkeepers.

INNKEEPERS

Lien on baggage of guests.

SEC. 785. HOTELS HAVE LIEN ON BAGGAGE OF GUESTS; MAY SELL BAGGAGE; RESIDUE; BAGGAGE NOT BELONGING TO GUEST.—Hotel, inn, boarding-house, and lodging-house keepers shall have a lien upon the baggage and other property belonging to or legally under the control of their guests, or boarders, or lodgers which may be in such hotel, inn, or boarding or lodging house for the proper charges due from such guests, or boarders, or lodgers, for their accommodation, board and lodging, and room rent, and such extras as are furnished at their request, and for all money paid for or advanced to such guests, or boarders or lodgers, and for the costs of enforcing such lien, with the right to the possession of such baggage and other property until such charges and moneys are paid.

Sale under.

Ante, p. 1235.

And unless such charges and moneys shall be paid when the same become due, said hotel, inn, boarding-house, or lodging-house keeper may sell said baggage and property under the conditions prescribed in sections 759 to 762 of this code relating to warehousemen.

Sale of unclaimed baggage; notice.

SEC. 786. UNCLAIMED BAGGAGE MAY BE SOLD AT AUCTION; NOTICE.—Whenever any trunk, carpetbag, valise, box, bundle, or other baggage has heretofore come, or shall hereafter come into the possession of the keeper of any hotel, inn, boarding or lodging house, and has remained or shall remain unclaimed for a period of three months, such keeper shall proceed to sell the same under the conditions prescribed in sections 759 to 762 of this code relating to warehousemen.

Ante, p. 1235.

FINDING

Finding.

Finder as bailee.

SEC. 787. OBLIGATION OF FINDER.—One who finds a thing lost is not bound to take charge of it, but if he does so he is thenceforward a depositary for the owner, with the rights and obligations of a depositary for hire.

CROSS REFERENCE

Depositary for hire, see sections 725 et seq. *Ante*, p. 1229.

Notice to owner.

SEC. 788. FINDER OF GOODS OR MONEY, OR SAVING ANIMALS, DUTY OF.—If the finder of a thing, other than a domestic animal, takes possession thereof, or if a person saves any such animal from drowning or starvation, he must, within a reasonable time, inform the owner thereof, if known, and make restitution to him upon demand, without compensation, except a reasonable charge for saving and caring therefor.

When owner unknown.

If the owner is not known to such finder or saver, he must, within five days, file an affidavit with the magistrate of the subdivision in which the finding or saving took place, particularly describing the property and the time, place, and circumstances under which it was found or saved.

Claimant to prove ownership.

SEC. 789. CLAIMANT TO PROVE OWNERSHIP.—The finder of a thing may, in good faith, before giving it up, require reasonable proof of ownership from any person claiming it.

Rewards, etc.

SEC. 790. REWARD, AND SO FORTH, TO FINDER.—The finder of a thing is entitled to compensation for all expenses necessarily incurred by him in its preservation, and for any other service necessarily performed by him about it, and to a reasonable reward for keeping it.

Storage.

SEC. 791. FINDER MAY PUT THING FOUND ON STORAGE.—The finder of a thing may exonerate himself from liability at any time by placing it on storage with any responsible person of good character, at a reasonable expense.

Sale.

SEC. 792. WHEN FINDER MAY SELL THE THING FOUND.—The finder of a thing may sell it, if it is a thing which is commonly the subject of sale, when the owner can not, with reasonable diligence, be found, or, being found, refuses upon demand to pay the lawful charges of the finder, in the following cases:

1. When the thing is in danger of perishing or of losing the greater part of its value; or

2. When the lawful charges of the finder amount to two-thirds of its value.

How made.

SEC. 793. HOW SALE IS TO BE MADE.—A sale under the provisions of section 792 must be made in the same manner as the sale of a thing pledged.

CROSS REFERENCE

Sale of pledge, see sections 1381 et seq. *Post*, p. 1305.

Vesting of title in finder.

SEC. 794. PROPERTY VESTS IN FINDER, WHEN; LIABILITY OF FINDER TO OWNER.—If no owner appears within six months after such finding or saving and offers reasonable proof of his ownership, and compensates, or in good faith offers to compensate, the finder or saver for the expense necessarily incurred by him, then such property vests in such finder or saver.

Thing abandoned.

SEC. 795. THING ABANDONED.—The provisions of this subchapter have no application to things which have been intentionally abandoned by their owners.

DEPOSIT FOR EXCHANGE.

CHAPTER 38.—DEPOSIT FOR EXCHANGE

Relations of the parties.

SEC. 796. RELATIONS OF THE PARTIES.—A deposit for exchange transfers to the depositary the title to the thing deposited, and creates between him and the depositor the relation of debtor and creditor merely.

CROSS REFERENCES

Ante, p. 1226. Deposit for exchange, defined, see section 704.

Post, p. 1243. Loan for exchange, see sections 810 et seq.

LOAN.

CHAPTER 39.—LOAN

For use.

LOAN FOR USE

Definition.

SEC. 797. LOAN, WHAT.—A loan for use is a contract by which one gives to another the temporary possession and use of personal property, and the latter agrees to return the same thing to him at a future time, without reward for its use.

Title to property lent.

SEC. 798. TITLE TO PROPERTY LENT.—A loan for use does not transfer the title to the thing; and all its increase during the period of the loan belongs to the lender.

CROSS REFERENCE

Post, p. 1243. Title to thing lent on loan for exchange, see section 812.

Care required of borrower.

SEC. 799. CARE REQUIRED OF BORROWER.—A borrower for use must use great care for the preservation in safety and in good condition of the thing lent.

Living animals.

SEC. 800. SAME.—One who borrows a living animal for use, must treat it with great kindness and provide everything necessary and suitable for it.

CROSS REFERENCE

Ante, p. 1228. Depositary of living animals for keeping, see section 713.

Degree of skill.

SEC. 801. DEGREE OF SKILL.—A borrower for use is bound to have and to exercise such skill in the care of the thing lent as he causes the lender to believe him to possess.

Repair of injuries.

SEC. 802. BORROWER, WHEN TO REPAIR INJURIES.—A borrower for use must repair all deteriorations or injuries to the thing lent which are occasioned by his negligence, however slight.

Use of thing lent.

SEC. 803. USE OF THING LENT.—The borrower of a thing for use may use it for such purposes only as the lender might reasonably anticipate at the time of lending.

CROSS REFERENCE

Relending forbidden, see section 804.

Relending.

SEC. 804. RELENDING FORBIDDEN.—The borrower of a thing for use must not part with it to a third person, without the consent of the lender.

Expenses of.

SEC. 805. BORROWER, WHEN TO BEAR EXPENSES.—The borrower of a thing for use must bear all its expenses during the loan, except such as are necessarily incurred by him to preserve it from unexpected and unusual injury. For such expenses he is entitled to compensation from the lender, who may, however, exonerate himself by surrendering the thing to the borrower.

CROSS REFERENCE

Post, p. 1243. Liability for expenses, see section 812.

Liability for defects.

SEC. 806. LENDER LIABLE FOR DEFECTS.—The lender of a thing for use must indemnify the borrower for damage caused by defects or vices in it, which he knew at the time of lending, and concealed from the borrower.

CROSS REFERENCES

Indemnity to depositary, see section 712. *Ante*, p. 1228.
Loan for exchange, see sections 810 and 814.

Lender may require return.

SEC. 807. LENDER MAY REQUIRE RETURN OF THING LENT.—The lender of a thing for use may at any time require its return, even though he lent it for a specified time or purpose. But if, on the faith of such an agreement, the borrower has made such arrangements that a return of the thing before the period agreed upon would cause him loss, exceeding the benefit derived by him from the loan, the lender must indemnify him for such loss, if he compels such return, the borrower not having in any manner violated his duty.

When returnable without demand.

SEC. 808.—WHEN RETURNABLE WITHOUT DEMAND.—If a thing is lent for use for a specified time or purpose, it must be returned to the lender without demand, as soon as the time has expired, or the purpose has been accomplished. In other cases it need not be returned until demanded.

Place of return.

SEC. 809. PLACE OF RETURN.—The borrower of a thing for use must return it to the lender, at the place contemplated by the parties at the time of lending; or if no particular place was so contemplated by them, then at the place where it was at the time.

LOAN FOR EXCHANGE

Loan for exchange.

Definition.

SEC. 810. LOAN FOR EXCHANGE, WHAT.—A loan for exchange is a contract by which one delivers personal property to another, and the latter agrees to return to the lender a similar thing at a future time, without reward for its use.

CROSS REFERENCE

Loan of money as a loan for exchange, see section 815. *Post*, p. 1244.

Title to property lent.

SEC. 811. SAME.—A loan, which the borrower is allowed by the lender to treat as a loan for use, or for exchange, at his option, is subject to all the provisions of this subchapter.

SEC. 812. TITLE TO PROPERTY LENT.—By a loan for exchange the title to the thing lent is transferred to the borrower, and he must bear all its expenses, and is entitled to all its increase.

CROSS REFERENCES

Liability for expenses, see section 805. *Ante*, p. 1242.
Title to property lent, see section 798. *Ante*, p. 1242.

Modification of contract.

SEC. 813. CONTRACT CAN NOT BE MODIFIED BY LENDER.—A lender for exchange can not require the borrower to fulfill his obligations at a time, or in a manner, different from that which was originally agreed upon.

Defects, return, etc.

SEC. 814. CERTAIN SECTIONS APPLICABLE.—Sections 806, 808, and 809 apply to a loan for exchange.

Loan of money.

LOAN OF MONEY

Definition.

SEC. 815. LOAN OF MONEY, DEFINED.—A loan of money is a contract by which one delivers a sum of money to another, and the latter agrees to return at a future time a sum equivalent to that which he borrowed. A loan for mere use is governed by the subchapter on loan for use.

CROSS REFERENCE

Interest, see sections 817 et seq.

Repayment in current money.

SEC. 816. LOAN TO BE REPAID IN CURRENT MONEY.—A borrower of money, unless there is an express contract to the contrary, must pay the amount due in such money as is current at the time when the loan becomes due, whether such money is worth more or less than the actual money lent.

Presumption of interest.

SEC. 817. LOAN PRESUMED TO BE ON INTEREST.—Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

CROSS REFERENCE

Ante, p. 1188. Tender of performance stops interest, see section 472.

"Interest."

SEC. 818. INTEREST, WHAT.—Interest is the compensation allowed by law or fixed by the parties for the use, or forebearance, or detention of money.

CROSS REFERENCES

Post, p. 1331. Interest as damages, see sections 1600 et seq.
Post, p. 1331. Interest in actions ex delicto, see section 1601.
Ante, p. 1177. Legacies, interests on, see section 394.
Post, pp. 1260, 1262. Liability of trustee for interest, see sections 1005 and 1019.
Post, p. 1276. Special partner may receive interest, see section 1136.

Annual rate.

SEC. 819. ANNUAL RATE.—When a rate of interest is prescribed by law or contract, without specifying the period of time by which such rate is to be calculated, it is to be deemed an annual rate.

CROSS REFERENCES

Post, p. 1331. Interest as damages, see section 1600 et seq.
Post, p. 1331. Rate of interest after breach of contract, see section 1602.

Legal interest.

SEC. 820. LEGAL INTEREST.—No rate of interest shall be allowed in excess of 6 per centum per annum upon any contract for the use or detention of money, unless the same is in writing and the interest agreed upon must not exceed 12 per centum per annum. (E. O. Nov. 11, 1913, § 1.)

Executive Order No. 1860.

Usurious contracts, recovery on.

SEC. 821. USURIOUS CONTRACTS; PRINCIPAL ONLY, RECOVERABLE.—All contracts whatsoever which may in any way, directly or indirectly, violate section 820 by stipulating for a greater rate of interest than 12 per centum per annum, shall be void and of no effect for the amount or value of the interest only; but the principal sum of money or value of the contract may be received and recovered. (E. O. Nov. 11, 1913, § 2.)

Executive Order No. 1860.

Recovery of usurious interest.

SEC. 822. RECOVERY OF USURIOUS INTEREST PAID.—When the interest received or collected for the use or detention of money exceeds the rate of 12 per centum per annum, it shall be deemed to be usurious, and the person or persons paying the same, or their legal representatives, may recover from the person, firm, or corporation receiving such interest, the amount of the interest so received or collected, in

any court of competent jurisdiction, within two years from the date of the payment of such interest. (E. O. Nov. 11, 1913, § 3.) Executive Order No. 1860.

SEC. 823. EVIDENCE OF USURY.—No evidence of usury shall be received on the trial of any case unless the same shall be pleaded and verified by the affidavit of the party wishing to avail himself of such defense. Evidence of usury.

CHAPTER 40.—HIRING

HIRING.

SEC. 824. HIRING, WHAT.—Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time. Definition.

CROSS REFERENCE

Hiring personalty, see sections 835 et seq. *Post*, p. 1246.

SEC. 825. PRODUCTS OF THING.—The products of a thing hired, during the hiring, belong to the hirer. Products of thing hired.

SEC. 826. QUIET POSSESSION.—An agreement to let upon hire binds the letter to secure to the hirer the quiet possession of the thing hired during the term of the hiring, against all persons lawfully claiming the same. Quiet possession.

CROSS REFERENCES

Duty of letter of personalty likewise, section 835. *Post*, p. 1246.
Termination of hiring for want of quiet enjoyment, see section 831. *Post*, p. 1246.

SEC. 827. DEGREE OF CARE, AND SO FORTH, ON PART OF HIRER.—The hirer of a thing must use ordinary care for its preservation in safety and in good condition. Degree of care, etc.

CROSS REFERENCE

Care required of depositary for hire, see section 725. *Ante*, p. 1229.

SEC. 828. MUST REPAIR INJURIES, AND SO FORTH.—The hirer of a thing must repair all deteriorations or injuries thereto occasioned by his want of ordinary care. Repair of injuries, etc.

CROSS REFERENCES

Duty of letter to repair, see section 835. *Post*, p. 1246.
Hirer may make repairs and recover from letter when, see section 837. *Post*, p. 1246.
Termination of hiring where hirer does not make repairs, see section 830.

SEC. 829. THING LET FOR A PARTICULAR PURPOSE.—When a thing is let for a particular purpose the hirer must not use it for any other purpose; and if he does, he is liable to the letter for all damages resulting from such use, or the letter may treat the contract as thereby rescinded. Letting for particular purpose.

CROSS REFERENCE

Right to terminate hiring, see section 830.

SEC. 830. WHEN LETTER MAY TERMINATE THE HIRING.—The letter of a thing may terminate the hiring and reclaim the thing before the end of the term agreed upon: Letter may terminate hiring.

1. When the hirer uses or permits a use of the thing hired in a manner contrary to the agreement of the parties; or,

2. When the hirer does not, within a reasonable time after request, make such repairs as he is bound to make.

CROSS REFERENCE

Termination of hiring, see section 829.

Hirer may terminate hiring.

SEC. 831. HIRER MAY TERMINATE THE HIRING, WHEN.—The hirer of a thing may terminate the hiring before the end of the term agreed upon:

1. When the letter does not, within a reasonable time after request, fulfill his obligations, if any, as to placing and securing the hirer in the quiet possession of the thing hired, or putting it into good condition, or repairing; or,

2. When the greater part of the thing hired, or that part which was and which the letter had at the time of the hiring reason to believe was the material inducement to the hirer to enter into the contract, perishes from any other cause than the want of ordinary care of the hirer.

CROSS REFERENCES

Repair of premises, see section 835.

Ante, p. 1245. Right of hirer to quiet enjoyment, see section 826.

Hiring terminates.

SEC. 832. WHEN HIRING TERMINATES.—The hiring of a thing terminates:

1. At the end of the term agreed upon;

2. By the mutual consent of the parties;

3. By the hirer acquiring a title to the thing hired superior to that of the letter; or,

4. By the destruction of the thing hired.

Termination by death, etc.

SEC. 833. WHEN TERMINATED BY DEATH, ETC., OF PARTY.—If the hiring of a thing is terminable at the pleasure of one of the parties, it is terminated by notice to the other of his death or incapacity to contract. In other cases it is not terminated thereby.

Apportionment of hire.

SEC. 834. APPORTIONMENT OF HIRE.—When the hiring of a thing is terminated before the time originally agreed upon, the hirer must pay the due proportion of the hire for such use as he has actually made of the thing, unless such use is merely nominal and of no benefit to him.

CROSS REFERENCE

Ante, p. 1229. For the compensation to which a depositary for hire is entitled upon a termination of the deposit, see sections 726 to 728.

Obligations of letter of personalty.

SEC. 835. OBLIGATIONS OF LETTER OF PERSONAL PROPERTY.—One who lets personal property must deliver it to the hirer, secure his quiet enjoyment thereof against all lawful claimants, put it into a condition fit for the purpose for which he lets it, and repair all deteriorations thereof not occasioned by the fault of the hirer and not the natural result of its use.

CROSS REFERENCES

Ante, p. 1245. Quiet enjoyment, see sections 826 and 831.

Ante, p. 1245. Repair of premises, see sections 828 and 831.

Ordinary expenses.

SEC. 836. ORDINARY EXPENSES.—A hirer of personal property must bear all such expenses concerning it as might naturally be foreseen to attend it during its use by him. All other expenses must be borne by the letter.

Extraordinary expenses.

SEC. 837. EXTRAORDINARY EXPENSES.—If a letter failed to fulfill his obligations, as prescribed by section 835, the hirer, after giving him notice to do so, if such notice can conveniently be given, may expend any reasonable amount necessary to make good the letter's default, and may recover such amount from him.

Return of thing hired.

SEC. 838. RETURN OF THING HIRED.—At the expiration of the term for which personal property is hired, the hirer must return it to the letter at the place contemplated by the parties at the time of

hiring; or, if no particular place was so contemplated by them, at the place at which it was at that time.

CHAPTER 41.—SERVICE WITH EMPLOYMENT

SERVICE WITH EMPLOYMENT.

APPLICATION AND SCOPE OF CHAPTERS 41 TO 43 OF THIS CODE

Application, etc., of Chapters 41–43.

SEC. 839. NO APPLICATION TO CANAL OR RAILROAD EMPLOYEES.—This chapter and chapters 42 and 43 of this code shall have no application to the United States Government, or the Panama Railroad Company, or to their employees as concerns such employment.

Canal and railroad employees excepted.

CROSS REFERENCE

In respect to injuries to employees of the Panama Canal or the Panama Railroad Company, see Act Sept. 7, 1916, c. 458, 39 Stat. 742, as amended; Act Apr. 22, 1908, c. 149, 35 Stat. 65, as amended; and Act Mar. 2, 1893, c. 186, 27 Stat. 531, as amended.

Vol. 39, p. 742.
Vol. 35, p. 65.
Vol. 27, p. 531.

SEC. 840. SCOPE OF CHAPTER.—The scope of this chapter is not confined to servants, but includes factors, brokers, carriers, agents, and all similar classes of persons.

Scope.

DEFINITION OF EMPLOYMENT

Employment.

SEC. 841. EMPLOYMENT, WHAT.—The contract of employment is a contract by which one, who is called the employer, engages another, who is called the employee, to do something for the benefit of the employer or of a third person.

Defined.

OBLIGATIONS OF EMPLOYER

Obligations of employer.

SEC. 842. WHEN EMPLOYER MUST INDEMNIFY EMPLOYEE.—An employer must indemnify his employee, except as prescribed in section 843, for all that he necessarily expends or loses in direct consequence of the discharge of his duties as such, or of his obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying such directions, believed them to be unlawful.

When employer must indemnify employee.

SEC. 843. WHEN EMPLOYER NOT BOUND TO INDEMNIFY EMPLOYEE.—An employer is not bound to indemnify his employee for losses suffered by the latter in consequence of the ordinary risks of the business in which he is employed nor in consequence of the negligence of another person employed by the same employer in the same general business, unless the negligence causing the injury was committed in the performance of a duty the employer owes by law to the employee, or unless the employer has neglected to use ordinary care in the selection of the culpable employee; provided, nevertheless, that the employer shall be liable for such injury when the same results from the wrongful act, neglect, or default of any agent or officer of such employer, superior to the employee injured, or of a person employed by such employer having the right to control or direct the services of such employee injured, and also when such injury results from the wrongful act, neglect, or default of a coemployee engaged in another department of labor from that of the employee injured, or employed upon a machine or other appliance other than that upon which the employee injured is employed.

When not bound to indemnify employee.

Knowledge by an employee injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of such employer shall not be a bar to recovery for any injury or death caused thereby, unless it shall also appear that such employee

Knowledge of defective machinery, etc.

fully understood, comprehended and appreciated the dangers incident to the use of such defective machinery, ways, appliances or structures, and thereafter consented to use the same, or continued in the use thereof.

Contracts waiving benefits void.

Any contract or agreement, express or implied, made by any such employee to waive the benefits of this section, or any part thereof, shall be null and void, and this section shall not be construed to deprive any such employee or his personal representative of any right or remedy to which he is now entitled under the laws of the Canal Zone.

Contributory negligence.

The rules and principles of law as to contributory negligence which apply to other cases shall apply to cases arising under this section, except in so far as the same are herein modified or changed.

Employer to indemnify for own negligence.

SEC. 844. EMPLOYER TO INDEMNIFY FOR HIS OWN NEGLIGENCE.—An employer must in all cases indemnify his employee for losses caused by the former's want of ordinary care.

Obligations of employee.

OBLIGATIONS OF EMPLOYEE

Duties of gratuitous employee.

SEC. 845. DUTIES OF GRATUITOUS EMPLOYEE.—One who, without consideration, undertakes to do a service for another, is not bound to perform the same, but if he actually enters upon its performance, he must use at least slight care and diligence therein.

Upon own special request.

SEC. 846. SAME.—One who, by his own special request, induces another to intrust him with the performance of a service, must perform the same fully. In other cases, one who undertakes a gratuitous service may relinquish it at any time.

With written power of attorney.

SEC. 847. SAME.—A gratuitous employee, who accepts a written power of attorney, must act under it so long as it remains in force, or until he gives notice to his employer that he will not do so.

Employee for reward.

SEC. 848. DUTIES OF EMPLOYEE FOR REWARD.—One who, for a good consideration, agrees to serve another, must perform the service, and must use ordinary care and diligence therein, so long as he is thus employed.

Employee for his own benefit.

SEC. 849. DUTIES OF EMPLOYEE FOR HIS OWN BENEFIT.—One who is employed at his own request to do that which is more for his own advantage than for that of his employer, must use great care and diligence therein to protect the interest of the latter.

Obedience.

SEC. 850. EMPLOYEE MUST OBEY EMPLOYER.—An employee must substantially comply with all the directions of his employer concerning the service on which he is engaged, except where such obedience is impossible or unlawful, or would impose new and unreasonable burdens upon the employee.

Conformity to usage.

SEC. 851. EMPLOYEE TO CONFORM TO USAGE.—An employee must perform his service in conformity to the usage of the place of performance, unless otherwise directed by his employer, or, unless it is impracticable, or manifestly injurious to his employer to do so.

Degree of skill required.

SEC. 852. DEGREE OF SKILL REQUIRED.—An employee is bound to exercise a reasonable degree of skill, unless his employer has notice, before employing him, of his want of skill.

Must use what skill he has.

SEC. 853. MUST USE WHAT SKILL HE HAS.—An employee is always bound to use such skill as he possesses, so far as the same is required, for the service specified.

What belongs to employer.

SEC. 854. WHAT BELONGS TO EMPLOYER.—Everything which an employee acquires by virtue of his employment, except the compensation, if any, which is due to him from his employer, belongs to the latter, whether acquired lawfully or unlawfully, or during or after the expiration of the term of his employment.

Duty to account.

SEC. 855. DUTY TO ACCOUNT.—An employee must, on demand, render to his employer just accounts of all his transactions in the course of his service, as often as may be reasonable, and must, without demand, give prompt notice to his employer of everything which he receives for his account.

Delivery without demand.

SEC. 856. EMPLOYEE NOT BOUND TO DELIVER WITHOUT DEMAND.—An employee who receives anything on account of his employer, in any capacity other than that of a mere servant, is not bound to deliver it to him until demanded, and is not at liberty to send it to him from a distance, without demand, in any mode involving greater risk than its retention by the employee himself.

Preference to be given to employers.

SEC. 857. PREFERENCE TO BE GIVEN TO EMPLOYERS.—An employee who has any business to transact on his own account, similar to that intrusted to him by his employer, must always give the latter the preference.

Responsibility for negligence.

SEC. 858. RESPONSIBILITY FOR NEGLIGENCE.—An employee who is guilty of a culpable degree of negligence is liable to his employer for the damage thereby caused to the latter; and the employer is liable to him, if the service is not gratuitous, for the value of such services only as are properly rendered.

Surviving employee.

SEC. 859.—SURVIVING EMPLOYEE.—Where service is to be rendered by two or more persons jointly, and one of them dies, the survivor must act alone, if the service to be rendered is such as he can rightly perform without the aid of the deceased person, but not otherwise.

Confidential employment.

SEC. 860. CONFIDENTIAL EMPLOYMENT.—The obligations peculiar to confidential employments are defined in chapters 49 and 50 of this code on trusts.

Post, pp. 1258, 1261.

Termination of employment.

TERMINATION OF EMPLOYMENT

How.

SEC. 861. EMPLOYMENT, HOW TERMINATED.—Every employment in which the power of the employee is not coupled with an interest in its subject is terminated by notice to him of:

1. The death of the employer; or
2. His legal incapacity to contract.

SEC. 862. SAME.—Every employment is terminated:

1. By the expiration of its appointed term;
2. By the extinction of its subject;
3. By the death of the employee; or
4. By his legal incapacity to act as such.

Continuance of service in certain cases.

SEC. 863. CONTINUANCE OF SERVICE IN CERTAIN CASES.—An employee, unless the term of his service has expired, or unless he has a right to discontinue it at any time without notice, must continue his service after notice of the death or incapacity of his employer, so far as is necessary to protect from serious injury the interests of the employer's successor in interest, until a reasonable time after notice of the facts has been communicated to such successor. The successor must compensate the employee for such service according to the terms of the contract of employment.

Employment at will.

SEC. 864. TERMS OF EMPLOYMENT.—An employment, having no specified terms, may be terminated at the will of either party, on notice to the other.

For specified term.

Employment for a specified term shall mean an employment for a period greater than one month.

Termination by employer.

SEC. 865. TERMINATION BY EMPLOYER.—An employment, for a specified term, may be terminated at any time by the employer, in case of any willful breach of duty by the employee in the course of his employment, or in case of his habitual neglect of his duty or continued incapacity to perform it.

By employee.

SEC. 866. TERMINATION BY EMPLOYEE.—An employment, for a specified term, may be terminated by the employee at any time, in case of any willful or permanent breach of the obligations of his employer to him as an employee.

Compensation on dismissal.

SEC. 867. COMPENSATION DUE ON DISMISSAL.—An employee who is not employed for a specified term, dismissed by his employer, is entitled to compensation for services rendered up to the time of such dismissal.

Compensation on quitting.

SEC. 868. COMPENSATION DUE ON QUITTING.—An employee who is not employed for a specified term and who quits the service of his employer, is entitled to compensation for services rendered up to the time of such quitting.

PARTICULAR EMPLOYMENTS.

CHAPTER 42.—PARTICULAR EMPLOYMENTS

CROSS REFERENCE

Ante, p. 1247.

This chapter not applicable to canal or railroad employees, see section 839.

Master and servant.

MASTER AND SERVANT

"Servant," defined.

SEC. 869. SERVANT, WHAT.—A servant is one who is employed to render personal service to his employer, otherwise than in the pursuit of an independent calling, and who in such service remains entirely under the control and direction of the latter, who is called his master.

CROSS REFERENCES

Ante, p. 1247. Employer and employee, generally, see sections 841 et seq.

Ante, p. 1248. Obligations of employee, see sections 845 et seq.

Ante, p. 1247. Obligations of employer, see sections 842 et seq.

Term of hiring.

SEC. 870. TERM OF HIRING.—A servant is presumed to have been hired for such length of time as the parties adopt for the estimation of wages. A hiring at a yearly rate is presumed to be for one year; a hiring at a daily rate, for one day; a hiring by piecework, for no specified term.

SEC. 871. SAME.—In the absence of any agreement or custom as to the term of service, the time of payment, or rate or value of wages, a servant is presumed to be hired by the month, at a monthly rate of reasonable wages, to be paid when the service is performed.

Renewal of hiring.

SEC. 872. RENEWAL OF HIRING.—Where, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Servant's duty to pay over.

SEC. 873. SERVANT TO PAY OVER WITHOUT DEMAND.—A servant must deliver to his master, as soon as with reasonable diligence he can find him, everything that he receives for his account, without demand; but he is not bound, without orders from his master, to send anything to him through another person.

Right to discharge.

SEC. 874. WHEN SERVANT MAY BE DISCHARGED.—A master may discharge any servant, other than an apprentice, whether engaged for a fixed term or not:

1. If he is guilty of misconduct in the course of his service, or of gross immorality, though unconnected with the same; or,

2. If, being employed about the person of the master, or in a confidential position, the master discovers that he has been guilty of misconduct, before or after the commencement of his service, of such a nature that, if the master had known or contemplated it, he would not have so employed him.

AGENTS

Agents.

SEC. 875. AGENT TO CONFORM TO HIS AUTHORITY.—An agent must not exceed the limits of his actual authority, as defined by chapter 51 of this code on agency.

Agent to conform to his authority.

Post, p. 1264.

CROSS REFERENCES

Actual authority, see section 1053. *Post*, p. 1266.
Agency, see sections 1035 et seq. *Post*, p. 1264.
Ostensible authority, see section 1054. *Post*, p. 1266.

SEC. 876. MUST KEEP HIS PRINCIPAL INFORMED.—An agent must use ordinary diligence to keep his principal informed of his acts in the course of the agency.

Must keep principal informed.

SEC. 877. COLLECTING AGENT.—An agent employed to collect a negotiable instrument must collect it promptly, and take all measures necessary to charge the parties thereto, in case of its dishonor; and, if it is a bill of exchange, must present it for acceptance with reasonable diligence.

Collecting agent.

SEC. 878. RESPONSIBILITY OF SUBAGENT.—A mere agent of an agent is not responsible as such to the principal of the latter.

Responsibility of subagent.

FACTORS

Factors.

CROSS REFERENCE

Lien of factor, see section 1396. *Post*, p. 1307.

SEC. 879.—FACTOR, WHAT.—A factor is an agent who, in the pursuit of an independent calling, is employed by another to sell property for him, and is vested by the latter with the possession or control of the property, or authorized to receive payment therefor from the purchaser.

"Factor" defined.

CROSS REFERENCES

Factor, what, see section 1082. *Post*, p. 1269.
Factor's authority, see sections 1083 and 1084. *Post*, p. 1269.
Factor's power to pledge principal's goods, see sections 1083 and 1372. *Post*, pp. 1269, 1304.

SEC. 880. OBEDIENCE REQUIRED FROM FACTOR.—A factor must obey the instructions of his principal to the same extent as any other employee, notwithstanding any advances he may have made to his principal upon the property consigned to him, except that if the principal forbids him to sell at the market price, he may, nevertheless, sell for his reimbursement, after giving to his principal reasonable notice of his intention to do so, and of the time and place of sale, and proceeding in all respects as a pledgee.

Obedience required.

SEC. 881. SALES ON CREDIT.—A factor may sell property consigned to him on such credit as is usual; but, having once agreed with the purchaser upon the term of credit, may not extend it.

Sales on credit.

CROSS REFERENCE

Authority to sell on credit, see section 1083. *Post*, p. 1269.

SEC. 882.—LIABILITY OF FACTOR UNDER GUARANTY COMMISSION.—A factor who charges his principal with a guaranty commission upon a sale, thereby assumes absolutely to pay the price when it falls due, as if it were a debt of his own, and not as a mere guarantor for the purchaser; but he does not thereby assume any additional responsibility for the safety of his remittance of the proceeds.

Liability of, under guaranty commission.

SEC. 883. FACTOR CAN NOT RELIEVE HIMSELF FROM LIABILITY.—A factor who receives property for sale, under a general agreement or usage to guarantee the sales or the remittance of the proceeds,

Factor can not relieve himself from liability.

can not relieve himself from responsibility therefor without the consent of his principal.

SERVICE WITHOUT EMPLOYMENT.

CHAPTER 43.—SERVICE WITHOUT EMPLOYMENT

Voluntary interference with property.

SEC. 884. VOLUNTARY INTERFERENCE WITH PROPERTY.—One who officiously, and without the consent of the real or apparent owner of a thing, takes it into his possession for the purpose of rendering a service about it, must complete such service, and use ordinary care, diligence, and reasonable skill about the same. He is not entitled to any compensation for his service or expenses, except that he may deduct actual and necessary expenses incurred by him about such service from any profits which his service has caused the thing to acquire for its owner, and must account to the owner for the residue.

CROSS REFERENCE

Gratuitous carriers, see section 888.

CARRIAGE IN GENERAL.

CHAPTER 44.—CARRIAGE IN GENERAL

"Contract of carriage" defined.

SEC. 885. CONTRACT OF CARRIAGE.—The contract of carriage is a contract for the conveyance of property, persons, or messages, from one place to another.

CROSS REFERENCES

Post, p. 1255. Carriage of messages, see section 955.
Post, p. 1253. Carriage of persons, see sections 890 et seq.
Post, p. 1253. Carriage of property, see sections 896 et seq.
Post, p. 1255. Common carriers, defined, see section 956.
Post, p. 1253. Gratuitous carriers of passengers, care required of, see sections 888 and 890.

Kinds of carriers.

SEC. 886. DIFFERENT KINDS OF CARRIERS.—Carriage is either:
1. Inland; or
2. Marine.

Application of certain chapters to marine carriers.
Post, pp. 1253–1255.

SEC. 887. APPLICATION OF CHAPTERS 44 TO 48 OF THIS CODE TO MARINE CARRIERS.—This chapter and chapters 45 to 48 of this code, with the exception of section 903, shall have no application to marine carriers. Marine carriers, within the meaning of this section, shall include carriers upon the ocean, upon arms of the sea, and those transiting the canal from ocean to ocean.

CROSS REFERENCE

Post, p. 1257. Inland carriers of property, rights and duties of, see sections 975 et seq.

Obligations of gratuitous carriers.

SEC. 888. OBLIGATIONS OF GRATUITOUS CARRIERS.—Carriers without reward are subject to the same rules as employees without reward, except so far as is otherwise provided by this chapter and chapters 45 to 48 of this code.

CROSS REFERENCES

Post, p. 1253. Gratuitous carriers, see sections 889, 890, and 897.
Service without employment, see section 884.

When carriage has begun.

SEC. 889. OBLIGATIONS OF GRATUITOUS CARRIER WHO HAS BEGUN TO CARRY.—A carrier without reward, who has begun to perform his undertaking, must complete it in like manner as if he had received a reward, unless he restores the person or thing carried to as favorable a position as before he commenced the carriage.

CROSS REFERENCES

Post, p. 1253. Compare with section 890.
Gratuitous carriers, see sections 888, 890, and 897.

CHAPTER 45.—CARRIAGE OF PERSONS

CARRIAGE OF PERSONS.

GRATUITOUS CARRIAGE OF PERSONS

Gratuitous carriage.

SEC. 890. DEGREE OF CARE REQUIRED.—A carrier of persons without reward must use ordinary care and diligence for their safe carriage.

Degree of care required.

CROSS REFERENCES

Carriers of persons, generally, see sections 966[1] et seq. *Post*, p. 1256.
Duty of gratuitous employee, generally, see section 889. *Ante*, p. 1252.
Gratuitous carriers, see sections 888, 889, 897. *Ante*, p. 1252.

CARRIAGE FOR REWARD

Carriage for reward.

SEC. 891. GENERAL DUTIES OF CARRIER.—A carrier of persons for reward must use the utmost care and diligence for their safe carriage, must provide everything necessary for that purpose, and must exercise to that end a reasonable degree of skill.

General duties.

CROSS REFERENCE

Limiting liability by contract, see sections 962 to 964. *Post*, p. 1256.

SEC. 892. VEHICLES.—A carrier of persons for reward is bound to provide vehicles safe and fit for the purposes to which they are put, and is not excused for default in this respect by any degree of care.

Vehicles, liability for safety, etc., of.

SEC. 893. NOT TO OVERLOAD HIS VEHICLE.—A carrier of persons for reward must not overcrowd or overload his vehicle.

Overloading.

SEC. 894. TREATMENT OF PASSENGERS.—A carrier of persons for reward must give to passengers all such accommodations as are usual and reasonable, and must treat them with civility, and give them a reasonable degree of attention.

Treatment of passengers.

SEC. 895. RATE OF SPEED AND DELAYS.—A carrier of persons for reward must travel at a reasonable rate of speed, and without any unreasonable delay, or deviation from his proper route.

Rate of speed and delays.

CROSS REFERENCE

Delay in delivery, damages for, see sections 977 and 1611. *Post*, pp. 1257, 1332.

CHAPTER 46.—CARRIAGE OF PROPERTY

CARRIAGE OF PROPERTY.

GENERAL DEFINITIONS

General definitions.

SEC. 896. FREIGHT, CONSIGNOR, AND SO FORTH, WHAT.—Property carried is called freight; the reward, if any, to be paid for its carriage is called freightage; the person who delivers the freight to the carrier is called the consignor; and the person to whom it is to be delivered is called the consignee.

Freight, consignor, etc., defined.

CROSS REFERENCE

Freightage, questions relating to, see sections 946 et seq. *Post*, p. 1254.

OBLIGATIONS OF CARRIER

Obligations of carrier.

SEC. 897. CARE AND DILIGENCE REQUIRED OF CARRIERS.—A carrier of property for reward must use at least ordinary care and diligence in the performance of all his duties. A carrier without reward must use at least slight care and diligence.

Care and diligence.

CROSS REFERENCES

Alteration of liability by agreement, see sections 962 et seq. *Post*, p. 1256.
Gratuitous carriers, see sections 888, 889, and 890.
Limiting liability by contract, see sections 962 et seq.

[1] So in original.

Carriers to obey directions.

SEC. 898. CARRIER TO OBEY DIRECTIONS.—A carrier must comply with the directions of the consignor or consignee to the same extent that an employee is bound to comply with those of his employer.

Conflict of orders.

SEC. 899. CONFLICT OF ORDERS.—When the directions of a consignor and consignee are conflicting, the carrier must comply with those of the consignor in respect to all matters except the delivery of the freight, as to which he must comply with the directions of the consignee, unless the consignor has specially forbidden the carrier to receive orders from the consignee inconsistent with his own.

Delivery of freight.

SEC. 900. DELIVERY OF FREIGHT.—A carrier of property must deliver it to the consignee, at the place to which it is addressed, in the manner usual at that place.

CROSS REFERENCE

Post, p. 1332.

Damages for carrier's breach of obligation to deliver, see section 1610.

Notice when freight not delivered.

SEC. 901. NOTICE WHEN FREIGHT NOT DELIVERED.—If, for any reason, a carrier does not deliver freight to the consignee or his agent personally, he must give notice to the consignee of its arrival, and keep the same in safety, upon his responsibility as a warehouseman, until the consignee has had a reasonable time to remove it. If the place of residence or business of the consignee be unknown to the carrier, he may give the notice by letter dropped in the nearest post office.

CROSS REFERENCE

Post, p. 1332.

Damages for breach of obligation to deliver, see sections 1610 and 1611.

When consignee does not accept.

SEC. 902. WHEN CONSIGNEE DOES NOT ACCEPT.—If a consignee does not accept and remove freight within 72 hours after the carrier has fulfilled his obligation to deliver, or duly offered to fulfill the same, the rights and duties of the carrier shall thereafter be the same as those of a warehouseman as provided in sections 731 to 784 of this code.

Ante, pp. 1230-1240.

Bills of lading.

BILLS OF LADING

Federal bill of lading Act applicable. U. S. C., p. 1680.

SEC. 903. APPLICATION OF FEDERAL BILL OF LADING ACT TO SHIPMENTS WHOLLY WITHIN ZONE.—The Federal bill of lading Act (U. S. Code, title 49, §§81 to 124) is hereby made applicable to shipments wholly within the Canal Zone.

Freightage.

FREIGHTAGE

When to be paid.

SEC. 946. WHEN FREIGHTAGE IS TO BE PAID.—A carrier may require his freightage to be paid upon his receiving the freight; but if he does not demand it then, he can not until he is ready to deliver the freight to the consignee.

CROSS REFERENCE

Ante, p. 1253.

Freightage, defined, see section 896.

Consignor's liability for freightage.

SEC. 947. CONSIGNOR, WHEN LIABLE FOR FREIGHTAGE.—The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he can not afterwards recover the freightage from the consignor.

When consignee liable.

SEC. 948. CONSIGNEE, WHEN LIABLE.—The consignee of freight is liable for the freightage, if he accepts the freight with notice of the intention of the consignor that he should pay it.

Natural increase of freight.

SEC. 949. NATURAL INCREASE OF FREIGHT.—No freightage can be charged upon the natural increase of freight.

Apportionment by contract.

SEC. 950. APPORTIONMENT BY CONTRACT.—If freightage is apportioned by a bill of lading or other contract made between a consignor and carrier, the carrier is entitled to payment, according to the apportionment, for so much as he delivers.

SEC. 951. SAME.—If a part of the freight is accepted by a consignee, without specific objection that the rest is not delivered, the freightage must be apportioned and paid as to that part, though not apportioned in the original contract.

Apportionment according to distance.

SEC. 952. APPORTIONMENT ACCORDING TO DISTANCE.—If a consignee voluntarily receives freight at a place short of the one appointed for delivery, the carrier is entitled to a just proportion of the freightage, according to distance. If the carrier, being ready and willing, offers to complete the transit, he is entitled to the full freightage. If he does not thus offer completion, and the consignee receives the freight only from necessity, the carrier is not entitled to any freightage.

Freight carried farther than agreed, etc.

SEC. 953. FREIGHT CARRIED FURTHER THAN AGREED, AND SO FORTH.—If freight is carried further, or more expeditiously, than was agreed upon by the parties, the carrier is not entitled to additional compensation, and can not refuse to deliver it, on the demand of the consignee, at the place and time of its arrival.

Carrier's lien.

SEC. 954. CARRIER'S LIEN FOR FREIGHTAGE, SERVICES, AND ADVANCES.—A carrier has a lien for freightage and for services rendered at request of shipper or consignee in and about the transportation, care, and preservation of the property, and he also has a lien for money advanced at request of shipper or consignee to discharge a prior lien. His rights to such lien are regulated by chapters 62 to 65 of this code on liens: *Provided, however*, That such lien may be enforced in the manner provided by sections 759 to 762 of this code relating to warehousemen.

Post, pp. 1296–1306.

Proviso.
Enforcement of lien.
Ante, p. 1235.

CROSS REFERENCE

Liens, generally, see sections 1309 et seq. *Post*, p. 1296.

CHAPTER 47.—CARRIAGE OF MESSAGES

CARRIAGE OF MESSAGES.

Degree of care.

SEC. 955. DEGREE OF CARE AND DILIGENCE REQUIRED.—A carrier of messages for reward must use great care and diligence in the transmission and delivery of messages.

CHAPTER 48.—COMMON CARRIERS

COMMON CARRIERS.

COMMON CARRIERS IN GENERAL

In general.

"Common carriers" defined.

SEC. 956. COMMON CARRIER, WHAT.—Everyone who offers to the public to carry persons, property, or messages is a common carrier of whatever he thus offers to carry.

CROSS REFERENCES

Carriage, in general, see sections 885 et seq. *Ante*, p. 1252.
Marine carriers, defined, see section 887. *Ante*, p. 1252.
Rights and liabilities of carriers; see
Carriers of persons, sections 966[1] et seq.
Carriers of property, sections 975 et seq. *Post*, p. 1257.

Obligation to accept freight.

SEC. 957. OBLIGATION TO ACCEPT FREIGHT.—A common carrier must, if able to do so, accept and carry whatever is offered to him, at a

[1] So in original.

reasonable time and place, of a kind that he undertakes or is accustomed to carry.

CROSS REFERENCES

Post, p. 1332. Damage for failure to accept freight, see section 1609.
Want of room, see section 970.[1]

Compensation. SEC. 961. COMPENSATION.—A common carrier is entitled to a reasonable compensation and no more, which he may require to be paid in advance. If payment thereof is refused, he may refuse to carry.

CROSS REFERENCE

Ante, p. 1255. Lien for freightage, services, and advances, see section 954.

Obligations altered only by agreement. SEC. 962. OBLIGATIONS OF CARRIER ALTERED ONLY BY AGREEMENT.—The obligations of a common carrier can not be limited by general notice on his part, but may be limited by special contract.

CROSS REFERENCES

Post, p. 1257. Compare with sections 964 and 978.
Limiting liability by special contract, see section 963.

Certain agreements void. SEC. 963. CERTAIN AGREEMENTS VOID.—A common carrier can not be exonerated, by any agreement made in anticipation thereof, from liability for the gross negligence, fraud, or willful wrong of himself or his servants.

CROSS REFERENCE

Ante, p. 1201. Contract exempting one from liability for negligent or unlawful acts, illegal, see section 573.

Effect of written contract. SEC. 964. EFFECT OF WRITTEN CONTRACT.—A passenger, consignor, or consignee, by accepting a ticket, bill of lading, or written contract for carriage, with a knowledge of its terms, assents to the rate of hire, the time, place, and manner of delivery therein stated; and also to the limitation stated therein upon the amount of the carrier's liability in case property carried in packages, trunks, or boxes, is lost or injured, when the value of such property is not named; and also to the limitation stated therein to the carrier's liability for loss or injury to live animals carried. But his assent to any other modification of the carrier's obligations contained in such instrument can be manifested only by his signature to the same.

Loss of valuable letters. SEC. 965. LOSS OF VALUABLE LETTERS.—A common carrier is not responsible for loss or miscarriage of a letter, or package having the form of a letter, containing money or notes, bills of exchange, or other papers of value, unless he be informed at the time of its receipt of the value of its contents.

CROSS REFERENCES

Post, p. 1257. Consigner of valuables to declare their nature, see section 978.
Contract limiting loss where value not stated, see section 964.

Common carriers of persons.

COMMON CARRIERS OF PERSONS

Liability for luggage. SEC. 967. LIABILITY FOR LUGGAGE.—The liability of a carrier for luggage received by him with a passenger is the same as that of a common carrier of property.

CROSS REFERENCE

Liability of carriers, generally, see sections 975 et seq.

Regulations for conduct of business. SEC. 971. REGULATIONS FOR CONDUCT OF BUSINESS.—A common carrier of persons may make rules for the conduct of his business, and

[1] So in original.

may require passengers to conform to them, if they are lawful, public, uniform in their application, and reasonable.

CROSS REFERENCE

Ejection of passenger not conforming to regulations, see section 973.

When fare payable.

SEC. 972. FARE, WHEN PAYABLE.—A common carrier may demand the fare of passengers, either at starting or at any subsequent time.

Ejection of passengers.

SEC. 973. EJECTION OF PASSENGERS.—A passenger who refuses to pay his fare or to conform to any lawful regulation of the carrier, may be ejected from the vehicle by the carrier. But this must be done with as little violence as possible, and at any usual stopping place or near some dwelling house.

CROSS REFERENCE

Power to make rules for regulation of business, see section 971. *Ante*, p. 1256.

Fare not payable after ejection.

SEC. 974. FARE NOT PAYABLE AFTER EJECTION.—After having ejected a passenger, a carrier has no right to require the payment of any part of his fare.

COMMON CARRIERS OF PROPERTY

Common carriers of property.

Liability of inland carriers for loss.

SEC. 975. LIABILITY OF INLAND CARRIERS FOR LOSS.—Unless the consignor accompanies the freight and retains exclusive control thereof, an inland common carrier of property is liable, from the time that he accepts until he relieves himself from liability pursuant to sections 900 to 902, for the loss or injury thereof from any cause whatever, except: *Ante*, p. 1254.

1. An inherent defect, vice, or weakness, or a spontaneous action, of the property itself;
2. The act of a public enemy of the United States;
3. The act of the law; or
4. Any irresistible superhuman cause.

CROSS REFERENCES

Liability as warehouseman, see section 901. *Post*, p. 1254.

Selling perishable articles, see section 983.[1]

Termination of liability, see sections 900 to 902. *Post*, p. 1254.

When exemptions do not apply.

SEC. 976. WHEN EXEMPTIONS DO NOT APPLY.—A common carrier is liable, even in the cases excepted by section 975, if his want of ordinary care exposes the property to the cause of the loss.

Liability for delay.

SEC. 977. LIABILITY FOR DELAY.—A common carrier is liable for delay only when it is caused by his want of ordinary care and diligence.

CROSS REFERENCE

Delay in carriage, liability for, see sections 895 and 1611. *Ante*, p. 1253; *post*, p. 1332.

Consignor of valuables to declare value.

SEC. 978. CONSIGNOR OF VALUABLES TO DECLARE THEIR NATURE.—A common carrier of gold, silver, platinum, or precious stones, or of imitations thereof, in a manufactured or unmanufactured state; of timepieces of any description; of negotiable paper or other valuable writings; of pictures, glass, or chinaware; of statuary, silk or laces; or of plated ware of any kind, is not liable for more than fifty dollars upon the loss or injury of any one package of such articles, unless he has notice, upon his receipt thereof, by mark upon the package or otherwise, of the nature of the freight; nor is such carrier liable upon any package carried for more than the value of the articles named in the receipt of the bill of lading.

[1] So in original.

CROSS REFERENCES

Ante, p. 1256. Contract limiting loss where value not declared, see section 964.

Ante, p. 1256. Letters or packages containing valuables, liability for loss of, see section 965.

Delivery of freight beyond usual route.

SEC. 979. DELIVERY OF FREIGHT BEYOND USUAL ROUTE.—If a common carrier accepts freight for a place beyond his usual route, he must, unless he stipulates otherwise, deliver it at the end of his route in that direction to some other competent carrier carrying to the place of address, or connected with those who thus carry, and his liability ceases upon making such delivery.

CROSS REFERENCE

Ante, p. 1254. Delivery, in general, see section 900.

Proof in case of loss.

SEC. 980. PROOF TO BE GIVEN IN CASE OF LOSS.—If freight addressed to a place beyond the usual route of the common carrier who first received it is lost or injured, he must, within a reasonable time after demand, give satisfactory proof to the consignor that the loss or injury did not occur while it was in his charge, or he will be himself liable therefor.

Carrier's services, other than carriage and delivery.

SEC. 981. CARRIER'S SERVICES, OTHER THAN CARRIAGE AND DELIVERY.—In respect to any service rendered by a common carrier about freight, other than its carriage and delivery, his rights and obligations are defined by the chapters on deposit and the chapters on service.

CROSS REFERENCES

Ante, p. 1226. Deposit, see sections 699 et seq.

Ante, p. 1247. Service, see sections 841 et seq.

TRUSTS IN GENERAL.

CHAPTER 49.—TRUSTS IN GENERAL.

Nature and creation.

NATURE AND CREATION OF A TRUST

Trusts classified.

SEC. 986. TRUSTS CLASSIFIED.—A trust is either:

1. Voluntary, or
2. Involuntary.

Voluntary.

SEC. 987. VOLUNTARY TRUST, WHAT.—A voluntary trust is an obligation arising out of a personal confidence reposed in, and voluntarily accepted by, one for the benefit of another.

Involuntary.

SEC. 988. INVOLUNTARY TRUST, WHAT.—An involuntary trust is one which is created by operation of law.

CROSS REFERENCE

Post, pp. 1259, 1261. Involuntary trust, see sections 994, 995, and 1008.

Parties.

SEC. 989. PARTIES TO THE CONTRACT.—The person whose confidence creates a trust is called the trustor; the person in whom the confidence is reposed is called the trustee; and the person for whose benefit the trust is created is called the beneficiary.

What constitutes one a trustee.

SEC. 990. WHAT CONSTITUTES ONE A TRUSTEE.—Everyone who voluntarily assumes a relation of personal confidence with another is deemed a trustee, within the meaning of this chapter, not only as to the person who reposes such confidence, but also as to all persons of whose affairs he thus acquires information which was given to such person in the like confidence, or over whose affairs he, by such confidence, obtains any control.

For what purpose a trust may be created.

SEC. 991. FOR WHAT PURPOSE A TRUST MAY BE CREATED.—A trust may be created for any purpose for which a contract may lawfully be made, except as otherwise prescribed by the chapter on transfer of property.

SEC. 992. VOLUNTARY TRUST, HOW CREATED AS TO TRUSTOR.—A voluntary trust is created, as to the trustor and beneficiary, by any words or acts of the trustor, indicating with reasonable certainty: Voluntary trust, how created as to trustor.

1. An intention on the part of the trustor to create a trust; and
2. The subject, purpose, and beneficiary of the trust.

CROSS REFERENCES

Creation of involuntary trust, see sections 994 and 995.
Trusts for benefit of third persons, see section 1011. *Post*, p. 1261.

SEC. 993. HOW CREATED AS TO TRUSTEE.—A voluntary trust is created, as to the trustee, by any words or acts of his indicating, with reasonable certainty: As to trustee.

1. His acceptance of the trust, or his acknowledgment, made upon sufficient consideration, of its existence; and
2. The subject, purpose, and beneficiary of the trust.

SEC. 994. INVOLUNTARY TRUSTEE, WHO IS.—One who wrongfully detains a thing is an involuntary trustee thereof, for the benefit of the owner. "Involuntary trustee."

CROSS REFERENCES

Compensation of involuntary trustee, see sections 1025 and 1076. *Post*, pp. 1263, 1269.
Involuntary trustee, who is, see sections 988 and 1008. *Ante*, p. 1258; *post*, p. 1261.

SEC. 995. INVOLUNTARY TRUST RESULTING FROM FRAUD, MISTAKE, ETC.—One who gains a thing by fraud, accident, mistake, undue influence, the violation of a trust, or other wrongful act, is, unless he has some other and better right thereto, an involuntary trustee of the thing gained, for the benefit of the person who would otherwise have had it. Involuntary trust resulting from fraud, mistake, etc.

CROSS REFERENCES

Compensation of involuntary trustee, see sections 1025 and 1026. *Post*, p. 1263.
Involuntary trustee, who is, see sections 988, 994, and 1008. *Ante*, p. 1258; *post*, p. 1261.

OBLIGATIONS OF TRUSTEES Obligations of trustees.

SEC. 996. TRUSTEE'S OBLIGATION TO GOOD FAITH.—In all matters connected with his trust, a trustee is bound to act in the highest good faith toward his beneficiary, and may not obtain any advantage therein over the latter by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. Good faith.

SEC. 997. TRUSTEE NOT TO USE PROPERTY FOR HIS OWN PROFIT.—A trustee may not use or deal with the trust property for his own profit, or for any other purpose unconnected with the trust, in any manner. Not to use property for own profit.

CROSS REFERENCES

Presumption of undue influence on transactions between the trustee and beneficiary, see section 1003. *Post*, p. 1260.
Purchaser from trustee charged with the trust when, see section 1008. *Post*, p. 1261.
Violations of duties by trustee are fraudulent, see section 1002. *Post*, p. 1260.

SEC. 998. CERTAIN TRANSACTIONS FORBIDDEN.—Neither a trustee nor any of his agents may take part in any transaction concerning the trust in which he or any one for whom he acts as agent has an interest, present or contingent, adverse to that of his beneficiary, except as follows: Transactions forbidden.

1. When the beneficiary, having capacity to contract, with a full knowledge of the motives of the trustee, and of all other facts concerning the transaction which might affect his own decision, and

without the use of any influence on the part of the trustee, permits him to do so;

2. When the beneficiary not having capacity to contract, the proper court, upon the like information of the facts, grants the like permission; or

3. When some of the beneficiaries having capacity to contract, and some not having it, the former grant permission for themselves, and the proper court for the latter, in the manner above prescribed.

CROSS REFERENCES

Duty to inform beneficiary of adverse interest, see section 1001.
Undertaking inconsistent trust, see section 1000.

Trustee's influence not to be used for his advantage.

SEC. 999. TRUSTEE'S INFLUENCE NOT TO BE USED FOR HIS ADVANTAGE.—A trustee may not use the influence which his position gives him to obtain any advantage from his beneficiary.

Trustee not to assume a trust adverse to interest of beneficiary.

SEC. 1000. TRUSTEE NOT TO ASSUME A TRUST ADVERSE TO INTEREST OF BENEFICIARY.—No trustee, so long as he remains in the trust, may undertake another trust adverse in its nature to the interest of his beneficiary in the subject of the trust, without the consent of the latter.

CROSS REFERENCES

Ante, p. 1259. Compare section 998.
Post, p. 1263. Removal of trustee, see sections 1030 and 1031.
Trustee's duty to disclose adverse interest, see section 1001.

To disclose adverse interest.

SEC. 1001. TO DISCLOSE ADVERSE INTEREST.—If a trustee acquires any interest, or becomes charged with any duty, adverse to the interest of his beneficiary in the subject of the trust, he must immediately inform the latter thereof, and may be at once removed.

When guilty of fraud.
Ante, p. 1259.

SEC. 1002. TRUSTEE GUILTY OF FRAUD, WHEN.—Every violation of the provisions of sections 996 to 1001 is a fraud against the beneficiary of a trust.

Presumption against trustees.

SEC. 1003. PRESUMPTION AGAINST TRUSTEES.—All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence.

Trustee mingling property.

SEC. 1004. TRUSTEE MINGLING TRUST PROPERTY WITH HIS OWN.—A trustee who willfully and unnecessarily mingles the trust property with his own, so as to constitute himself in appearance its absolute owner, is liable for its safety in all events, and for the value of its use.

Measure of liability for breach of trust.
Ante, p. 1259.

SEC. 1005. MEASURE OF LIABILITY FOR BREACH OF TRUST.—A trustee who uses or disposes of the trust property, contrary to section 997, may, at the option of the beneficiary, be required to account for all profits so made, or to pay the value of its use, and, if he has disposed thereof, to replace it, with its fruits, or to account for its proceeds, with interest.

CROSS REFERENCES

Post, p. 1262. Degree of diligence requisite, see section 1016.
Post, p. 1262. Liability for noninvestment of funds, see section 1019.

When unintentional breach.

SEC. 1006. SAME.—A trustee who uses or disposes of the trust property in any manner not authorized by the trust, but in good faith, and with intent to serve the interests of the beneficiary, is liable only to make good whatever is lost to the beneficiary by his error.

SEC. 1007. COTRUSTEES, HOW FAR LIABLE FOR EACH OTHER.—A trustee is responsible for the wrongful acts of a cotrustee to which he consented, or which, by his negligence, he enabled the latter to commit, but for no others. Cotrustees, liability.

CROSS REFERENCE

Compare with section 1022. *Post*, p. 1262.

OBLIGATIONS OF THIRD PERSONS Obligations of third persons.

SEC. 1008. THIRD PERSONS, WHEN INVOLUNTARY TRUSTEES.—Everyone to whom property is transferred in violation of a trust, holds the same as an involuntary trustee under such trust, unless he purchased it in good faith, and for a valuable consideration. When involuntary trustees.

CROSS REFERENCE

Involuntary trustees, who are, see sections 988, 994, and 995. *Ante*, pp. 1258, 1259.

SEC. 1009. WHEN THIRD PERSON MUST SEE TO APPLICATION OF TRUST PROPERTY.—One who actually and in good faith transfers any money or other property to a trustee, as such, is not bound to see to the application thereof, and his rights can in no way be prejudiced by a misapplication thereof by the trustee. Other persons must, at their peril, see to the proper application of money or other property paid or delivered by them. When third person must see to application of trust property.

CHAPTER 50.—TRUSTS FOR BENEFIT OF THIRD PERSONS

TRUSTS FOR BENEFIT OF THIRD PERSONS.

NATURE AND CREATION OF THE TRUST Nature and creation of trust.

SEC. 1010. WHO ARE TRUSTEES WITHIN SCOPE OF THIS CHAPTER.—The provisions of this chapter apply only to express trusts, created for the benefit of another than the trustor, and in which the title to the trust property is vested in the trustee; not including, however, those of executors, administrators, and guardians, as such. Who are trustees within scope of this chapter.

SEC. 1011. CREATION OF TRUST.—The mutual consent of a trustor and trustee creates a trust of which the beneficiary may take advantage at any time prior to its rescission. Creation of trust.

CROSS REFERENCES

Promise for benefit of third person, see section 494. *Ante*, p. 1191.

Revoking trust, beneficiary's consent necessary, see section 1028. *Post*, p. 1263.

SEC. 1012. TRUSTEES APPOINTED BY COURT.—When a trustee is appointed by a court or public officer, as such, such court or officer is the trustor, within the meaning of section 1011. Court, etc., as trustor.

SEC. 1013. DECLARATION OF TRUST.—The nature, extent, and object of a trust are expressed in the declaration of trust. Declaration of trust.

SEC. 1014. SAME.—All declarations of a trustor to his trustees, in relation to the trust, before its acceptance by the trustees, or any of them, are to be deemed part of the declaration of the trust, except that when a declaration of trust is made in writing, all previous declarations by the same trustor are merged therein.

OBLIGATIONS OF TRUSTEES Obligations of trustees.

SEC. 1015. TRUSTEES MUST OBEY DECLARATION OF TRUST.—A trustee must fulfill the purpose of the trust, as declared at its creation, and must follow all the directions of the trustor given at that time, except as modified by the consent of all parties interested, in the same manner, and to the same extent, as an employee. Must obey declaration of trust.

CROSS REFERENCE

Authority of trustee, generally, see section 1021.

Degree of care and diligence.

SEC. 1016. DEGREE OF CARE AND DILIGENCE IN EXECUTION OF TRUST.—A trustee, whether he receives any compensation or not, must use at least ordinary care and diligence in the execution of his trust.

CROSS REFERENCE

Ante, p. 1259. Obligations of trustees, see, generally, sections 996 et seq.

Duty as to appointment of successor.

SEC. 1017. DUTY OF TRUSTEE AS TO APPOINTMENT OF SUCCESSOR.—If a trustee procures or assents to his discharge from his office, before his trust is fully executed, he must use at least ordinary care and diligence to secure the appointment of a trustworthy successor before accepting his own final discharge.

CROSS REFERENCE

Post, p. 1264. Succession or appointment of new trustees, see section 1032 et seq.

Investment of money by.

SEC. 1018. INVESTMENT OF MONEY BY TRUSTEE.—A trustee must invest money received by him under the trust, as fast as he collects a sufficient amount, in such manner as to afford reasonable security and interest for the same.

CROSS REFERENCE

Liability for interest or failure to invest funds, see section 1019.

Trustee's liability for interest.

SEC. 1019. INTEREST, SIMPLE OR COMPOUND, ON OMISSION TO INVEST TRUST MONEYS.—If a trustee omits to invest the trust moneys according to section 1018, he must pay simple interest thereon, if such omission is negligent merely, and compound interest if it is willful.

CROSS REFERENCE

Ante, p. 1260. Trustee's liability for interest, compare with section 1005.

Purchase by trustee of claims against trust fund.

SEC. 1020. PURCHASE BY TRUSTEE OF CLAIMS AGAINST TRUST FUND.—A trustee can not enforce any claim against the trust property which he purchases after or in contemplation of his appointment as trustee; but he may be allowed, by any competent court, to charge to the trust property what he has in good faith paid for the claim, upon discharging the same.

CROSS REFERENCE

Ante, p. 1259. Purchasing debts against the trust estate prohibited, see section 998.

Trustee's powers.

POWERS OF TRUSTEES

As agent.

SEC. 1021. TRUSTEE'S POWER AS AGENT.—A trustee is a general agent for the trust property. His authority is such as is conferred upon him by the declaration of trust and by this chapter, and none other. His acts, within the scope of his authority, bind the trust property to the same extent as the acts of an agent bind his principal.

CROSS REFERENCES

Post, p. 1267. Agent's acts binding principal, see sections 1063 et seq.

Ante, p. 1258. For what purposes trusts may be created, see section 991.

Powers to two or more trustees, see section 1022.

All must act.

SEC. 1022. ALL MUST ACT.—Where there are several cotrustees, all must unite in any act to bind the trust property, unless the declaration of trust otherwise provides.

CROSS REFERENCES

Liability for acts of cotrustee, see section 1007. *Ante*, p. 1261.
Survival of trust, see section 1033. *Post*, p. 1264.

Discretionary powers.

SEC. 1023. DISCRETIONARY POWERS.—A discretionary power conferred upon a trustee is presumed not to be left to his arbitrary discretion, but may be controlled by the proper court if not reasonably exercised, unless an absolute discretion is clearly conferred by the declaration of trust.

RIGHTS OF TRUSTEES

Rights of trustees.

Indemnification.

SEC. 1024. INDEMNIFICATION OF TRUSTEE.—A trustee is entitled to the repayment, out of the trust property, of all expenses actually and properly incurred by him in the performance of his trust. He is entitled to the repayment of even unlawful expenditures, if they were productive of actual benefit to the estate.

CROSS REFERENCE

Reimbursement on purchase of claims against estate, see section 1020. *Ante*, p. 1262.

Compensation.

SEC. 1025. COMPENSATION OF TRUSTEE.—Except as provided in the Code of Civil Procedure, when a declaration of trust is silent upon the subject of compensation the trustee is entitled to the same compensation as an executor. If it specifies the amount of his compensation, he is entitled to the amount thus specified and no more. If it directs that he shall be allowed a compensation but does not specify the rate or amount, he is entitled to such compensation as may be reasonable under the circumstances. If there are two or more trustees, the compensation shall be apportioned among the trustees according to the services rendered by them respectively.

CROSS REFERENCE

Involuntary trustee entitled to no compensation when, see section 1026.

Involuntary trustee.

SEC. 1026. INVOLUNTARY TRUSTEE.—An involuntary trustee, who becomes such through his own fault, has none of the rights mentioned in this subchapter.

CROSS REFERENCE

Involuntary trustee, defined, see sections 988, 994, and 995. *Ante*, pp. 1258, 1259.

Termination of the trust.

TERMINATION OF THE TRUST

How extinguished.

SEC. 1027. TRUST, HOW EXTINGUISHED.—A trust is extinguished by the entire fulfillment of its object, or by such object becoming impossible or unlawful.

Not revocable.

SEC. 1028. NOT REVOCABLE.—A trust can not be revoked by the trustor after its acceptance, actual or presumed, by the trustee and beneficiaries, except by the consent of all the beneficiaries, unless the declaration of trust reserves a power of revocation to the trustor, and in that case the power must be strictly pursued.

How trustee's office vacated.

SEC. 1029. TRUSTEE'S OFFICE, HOW VACATED.—The office of a trustee is vacated:

1. By his death; or
2. By his discharge.

How discharged.

SEC. 1030. TRUSTEE, HOW DISCHARGED.—A trustee can be discharged from his trust only as follows:

1. By the extinction of the trust;
2. By the completion of his duties under the trust;

3. By such means as may be prescribed by the declaration of trust;

4. By the consent of the beneficiary, if he have capacity to contract;

5. By the judgment of a competent tribunal, in a direct proceeding for that purpose, that he is of unsound mind; or

6. By the district court.

Removal by district court.

SEC. 1031. REMOVAL BY DISTRICT COURT.—The district court may remove any trustee who has violated or is unfit to execute the trust, or may accept the resignation of a trustee.

CROSS REFERENCE

Ante, p. 1260.

Removal for adverse interest, see section 1001.

SUCCESSION OR APPOINTMENT OF NEW TRUSTEES

Succession or appointment of new trustees.

Appointment by court.

SEC. 1032. APPOINTMENT OF TRUSTEE BY COURT TO FILL VACANCY.—The district court must appoint a trustee whenever there is a vacancy, and the declaration of trust does not provide a practical method of appointment. In all cases of appointment of any trustee or trustees by any court, if the cestui que trustent, or any one of them are of the age of fourteen years, they, or the one or more of them of the age of fourteen years, may make nomination, to the court, and unless such nominee or nominees are incompetent, upon one or more of the grounds of incompetency specified in the Code of Civil Procedure, to discharge the duties of trustee, the court must appoint such nominee, or nominees, as trustee, or trustees, as the case may be.

Survivorship between cotrustees.

SEC. 1033. SURVIVORSHIP BETWEEN COTRUSTEES.—On the death, renunciation, or discharge of one of several cotrustees the trust survives to the others.

When district court to appoint.

SEC. 1034. DISTRICT COURT TO APPOINT TRUSTEE WHEN.—When a trust exists without any appointed trustee, or where all the trustees renounce, die, or are discharged, the district court must appoint another trustee and direct the execution of the trust. The court may, in its discretion, appoint the original number, or any less number of trustees.

AGENCY IN GENERAL.

CHAPTER 51.—AGENCY IN GENERAL

DEFINITION OF AGENCY

Definition.

SEC. 1035. AGENCY, WHAT.—An agent is one who represents another, called the principal, in dealings with third persons. Such representation is called agency.

CROSS REFERENCES

Ante, p. 1251.

Agents, see sections 875 to 878.

Ante, p. 1251.

Factors, see sections 879 et seq.

Capacity to appoint; to serve as.

SEC. 1036. WHO MAY APPOINT, AND WHO MAY BE AN AGENT.—Any person having capacity to contract may appoint an agent, and any person may be an agent.

General or special.

SEC. 1037. AGENTS, GENERAL OR SPECIAL.—An agent for a particular act or transaction is called a special agent. All others are general agents.

Actual or ostensible.

SEC. 1038. AGENCY, ACTUAL OR OSTENSIBLE.—An agency is either actual or ostensible.

CROSS REFERENCES

Actual agent's authority, see sections 1052, 1053, 1055, and 1056. *Post*, p. 1266.
Ostensible agent's authority, see sections 1052, 1054 to 1056, and 1067. *Post*, pp. 1266, 1267.

Actual agency.

SEC. 1039. ACTUAL AGENCY.—An agency is actual when the agent is really employed by the principal.

Ostensible.

SEC. 1040. OSTENSIBLE AGENCY.—An agency is ostensible when the principal intentionally, or by want of ordinary care, causes a third person to believe another to be his agent who is not really employed by him.

CROSS REFERENCE

Compare section 1054. *Post*, p. 1266.

Authority of agents.

AUTHORITY OF AGENTS

Extent.

SEC. 1041. WHAT AUTHORITY MAY BE CONFERRED.—An agent may be authorized to do any acts which his principal might do, except those to which the latter is bound to give his personal attention.

CROSS REFERENCE

Post, p. 1269.

Delegation of authority by agent, see sections 1077 to 1079.

All legal acts.

SEC. 1042. AGENT MAY PERFORM ACTS REQUIRED OF PRINCIPAL BY CODE.—Every act which, according to this code, may be done by or to any person, may be done by or to the agent of such person for that purpose, unless a contrary intention clearly appears.

Authority to defraud principal denied.

SEC. 1043.—AGENT CAN NOT HAVE AUTHORITY TO DEFRAUD PRINCIPAL.—An agent can never have authority, either actual or ostensible, to do an act which is, and is known or suspected by the person with whom he deals, to be a fraud upon the principal.

Creation of agency.

SEC. 1044. CREATION OF AGENCY.—An agency may be created, and an authority may be conferred by a precedent authorization or a subsequent ratification.

Consideration unnecessary.

SEC. 1045. CONSIDERATION UNNECESSARY.—A consideration is not necessary to make an authority, whether precedent or subsequent, binding upon the principal.

Form of authority.

SEC. 1046. FORM OF AUTHORITY.—An oral authorization is sufficient for any purpose, except that an authority to enter into a contract required by law to be in writing can only be given by an instrument in writing.

CROSS REFERENCES

Power of attorney to execute mortgage, see section 1345 *Post*, p. 1301.
Statute of frauds, see sections 451 and 600. *Ante*, pp. 1185, 1204.

Ratification of part of transaction.

SEC. 1047. RATIFICATION OF PART OF A TRANSACTION.—Ratification of part of an indivisible transaction is a ratification of the whole.

Of agent's act.

SEC. 1048. RATIFICATION OF AGENT'S ACT.—A ratification can be made only in the manner that would have been necessary to confer an original authority for the act ratified, or where an oral authorization would suffice, by accepting or retaining the benefit of the act with notice thereof.

CROSS REFERENCES

Ratification of part, see section 1047.
Ratification is not binding, and may be rescinded, if made without full knowledge of the facts, see section 1051. *Post*, p. 1266.

When ratification void.

SEC. 1049. WHEN RATIFICATION VOID.—A ratification is not valid unless, at the time of ratifying the act done, the principal has power to confer authority for such an act.

Ratification not to work injury to third person.

SEC. 1050. RATIFICATION NOT TO WORK INJURY TO THIRD PERSONS.—No unauthorized act can be made valid, retroactively, to the prejudice of third persons, without their consent.

Rescission of.

SEC. 1051. RESCISSION OF RATIFICATION.—A ratification may be rescinded when made without such consent as is required in a contract, or with an imperfect knowledge of the material facts of the transaction ratified, but not otherwise.

Measure of agent's authority.

SEC. 1052. MEASURE OF AGENT'S AUTHORITY.—An agent has such authority as the principal, actually or ostensibly, confers upon him.

CROSS REFERENCES

Ante, p. 1265. Actual agent, defined, see section 1039.

Post, p. 1267. Extent of authority, see sections 1055 to 1057 and 1063.

Post, p. 1267. Ostensible agency, see sections 1054 to 1056, 1063, and 1067.

Actual authority.

SEC. 1053. ACTUAL AUTHORITY, WHAT.—Actual authority is such as a principal intentionally confers upon the agent, or intentionally, or by want of ordinary care, allows the agent to believe himself to possess.

Ostensible.

SEC. 1054. OSTENSIBLE AUTHORITY, WHAT.—Ostensible authority is such as a principal, intentionally or by want of ordinary care, causes or allows a third person to believe the agent to possess.

CROSS REFERENCES

Ante, p. 1265. Estoppel from a subsequent ratification, see sections 1044, 1048, and 1049 to 1051.

Ante, p. 1265. Ostensible agent, defined, see section 1040.

Persons having notice of restrictions.

SEC. 1055. AGENT'S AUTHORITY AS TO PERSONS HAVING NOTICE OF RESTRICTIONS UPON IT.—Every agent has actually such authority as is defined by this chapter and chapter 52 of this code, unless specially deprived thereof by his principal, and has even then such authority ostensibly, except as to persons who have actual or constructive notice of the restriction upon his authority.

Post, p. 1269.

CROSS REFERENCE

Post, p. 1267. Extent of authority, see sections 1052, 1056, 1057, and 1063.

Agent's necessary authority.

SEC. 1056. AGENT'S NECESSARY AUTHORITY.—An agent has authority:

1. To do everything necessary or proper and usual, in the ordinary course of business, for effecting the purpose of his agency; and

2. To make a representation respecting any matter of fact, not including the terms of his authority, but upon which his right to use his authority depends, and the truth of which can not be determined by the use of reasonable diligence on the part of the person to whom the representation is made.

CROSS REFERENCE

Post, p. 1267. Extent of authority, see sections 1052, 1055, 1057, and 1063.

Power to disobey instructions.

SEC. 1057. AGENT'S POWER TO DISOBEY INSTRUCTIONS.—An agent has power to disobey instructions in dealing with the subject of the agency, in cases where it is clearly for the interest of his principal that he should do so, and there is not time to communicate with the principal.

CROSS REFERENCE

Post, p. 1267. Extent of authority, see sections 1052, 1055, 1056, and 1063.

Authority construed by specific terms.

SEC. 1058.—AUTHORITY TO BE CONSTRUED BY ITS SPECIFIC RATHER THAN BY ITS GENERAL TERMS.—When an authority is given partly in general and partly in specific terms, the general authority gives no higher powers than those specifically mentioned.

Exceptions to general authority.

SEC. 1059. EXCEPTIONS TO GENERAL AUTHORITY.—An authority expressed in general terms, however broad, does not authorize an agent:

1. To act in his own name, unless it is the usual course of business to do so;

2. To define the scope of his agency; or

3. To do any act which a trustee is forbidden to do by sections 996 to 1007.

CROSS REFERENCES

Defining scope of agency, see section 1056 (2). *Ante*, p. 1266.

Obligation of trustees, see sections 996 to 1007. *Ante*, p. 1259.

Authority to sell personal property.

SEC. 1060. WHAT INCLUDED IN AUTHORITY TO SELL PERSONAL PROPERTY.—An authority to sell personal property includes authority to warrant the title of the principal and the quality and quantity of the property.

Authority to receive price of property.

SEC. 1061. AUTHORITY OF GENERAL AGENT TO RECEIVE PRICE OF PROPERTY.—A general agent to sell, who is intrusted by the principal with the possession of the thing sold, has authority to receive the price.

CROSS REFERENCE

Agent to collect, see section 877. *Ante*, p. 1251.

Of special agent to receive price.

SEB. 1062. AUTHORITY OF SPECIAL AGENT TO RECEIVE PRICE.—A special agent to sell has authority to receive the price on delivery of the thing sold, but not afterwards.

Mutual obligations of principals and third persons.

MUTUAL OBLIGATIONS OF PRINCIPALS AND THIRD PERSONS

Acts of agent within scope of authority.

SEC. 1063. PRINCIPAL, HOW AFFECTED BY ACTS OF AGENT WITHIN THE SCOPE OF HIS AUTHORITY.—An agent represents his principal for all purposes within the scope of his actual or ostensible authority, and all the rights and liabilities which would accrue to the agent from transactions within such limit, if they had been entered into on his own account, accrue to the principal.

CROSS REFERENCE

Extent of agent's authority, see sections 1052, 1055, 1056, and 1057. *Ante*, p. 1266.

When principal bound by incomplete execution of authority.

SEC. 1064. PRINCIPAL, WHEN BOUND BY INCOMPLETE EXECUTION OF AUTHORITY.—A principal is bound by an incomplete execution of an authority when it is consistent with the whole purpose and scope thereof, but not otherwise.

Notice to agent, as notice to principal.

SEC. 1065. NOTICE TO AGENT, WHEN NOTICE TO PRINCIPAL.—As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other.

Obligation when agent exceeds authority.

SEC. 1066. OBLIGATION OF PRINCIPAL WHEN AGENT EXCEEDS HIS AUTHORITY.—When an agent exceeds his authority, his principal is bound by his authorized acts so far only as they can be plainly separated from those which are unauthorized.

Acts done under ostensible authority.

SEC. 1067. FOR ACTS DONE UNDER A MERELY OSTENSIBLE AUTHORITY.—A principal is bound by acts of his agent, under a merely ostensible

authority, to those persons only who have in good faith, and without want of ordinary care, incurred a liability or parted with value, upon the faith thereof.

CROSS REFERENCE

Ante, p. 1266. Ostensible authority, see sections 1054 to 1056.

When exclusive credit given agent.

SEC. 1068. WHEN EXCLUSIVE CREDIT IS GIVEN TO AGENT.—If exclusive credit is given to an agent by the person dealing with him, his principal is exonerated by payment or other satisfaction made by him to his agent in good faith, before receiving notice of the creditor's election to hold him responsible.

Rights of person against undisclosed principal.

SEC. 1069. RIGHTS OF PERSON WHO DEALS WITH AGENT WITHOUT KNOWLEDGE OF AGENCY.—One who deals with an agent without knowing or having reason to believe that the agent acts as such in the transaction, may set off against any claim of the principal arising out of the same, all claims which he might have set off against the agent before notice of the agency.

Instrument intended to bind principal.

SEC. 1070. INSTRUMENT INTENDED TO BIND PRINCIPAL DOES BIND HIM.—An instrument within the scope of his authority by which an agent intends to bind his principal, does bind him if such intent is plainly inferable from the instrument itself.

Liability for agent's negligence, etc.

SEC. 1071. PRINCIPAL'S RESPONSIBILITY FOR AGENT'S NEGLIGENCE, WRONGFUL ACT, OR OMISSION.—Unless required by or under the authority of law to employ that particular agent, a principal is responsible to third persons for the negligence of his agent in the transaction of the business of the agency, including wrongful acts committed by such agent in and as a part of the transaction of such business, and for his willful omission to fulfill the obligations of the principal.

Exception.

SEC. 1072. SAME.—A principal is responsible for no other wrongs committed by his agent than those mentioned in section 1071, unless he has authorized or ratified them, even though they are committed while the agent is engaged in his service.

Obligations of agents to third persons.

OBLIGATIONS OF AGENTS TO THIRD PERSONS

Warranty of authority.

SEC. 1073. WARRANTY OF AUTHORITY.—One who assumes to act as an agent thereby warrants, to all who deal with him in that capacity, that he has the authority which he assumes.

CROSS REFERENCE

Post, p. 1332. Damages for breach of warranty of authority, see section 1612.

When personally liable.

SEC. 1074. AGENT'S RESPONSIBILITY TO THIRD PERSONS.—One who assumes to act as an agent is responsible to third persons as a principal for his acts in the course of his agency, in any of the following cases, and in no others:

1. When, with his consent, credit is given to him personally in a transaction;

2. When he enters into a written contract in the name of his principal, without believing, in good faith, that he has authority to do so; or

3. When his acts are wrongful in their nature.

Obligation to surrender property to third person.

SEC. 1075. OBLIGATION OF AGENT TO SURRENDER PROPERTY TO THIRD PERSON.—If an agent receives anything for the benefit of his principal, to the possession of which another person is entitled, he must, on demand, surrender it to such person, or so much of it as he has under his control, at the time of demand, on being indemnified for any advance which he has made to his principal, in good faith, on

account of the same; and is responsible therefor, if, after notice from the owner, he delivers it to his principal.

CROSS REFERENCE

Compare with sections on deposit, see sections 705, 708, and 709. *Ante*, p. 1227.

SEC. 1076. CODE PROVISIONS GOVERNING.—The provisions of this subchapter are subject to the provisions of sections 15 to 28. Code provisions governing. *Ante*, p. 1125.

DELEGATION OF AGENCY

SEC. 1077. AGENT'S DELEGATION OF HIS POWERS.—An agent, unless specially forbidden by his principal to do so, can delegate his powers to another person in any of the following cases, and in no others: Agent's delegation of powers.

1. When the act to be done is purely mechanical;
2. When it is such as the agent can not himself, and the subagent can lawfully perform;
3. When it is the usage of the place to delegate such powers; or
4. When such delegation is specially authorized by the principal.

SEC. 1078. AGENT'S UNAUTHORIZED EMPLOYMENT OF SUBAGENT.—If an agent employs a subagent without authority, the former is a principal and the latter his agent, and the principal of the former has no connection with the latter. Unauthorized employment of subagent.

CROSS REFERENCE

As to liability of agent of an agent to principal, see section 878. *Ante*, p. 1251.

SEC. 1079. SUBAGENT, RIGHTFULLY APPOINTED, REPRESENTS PRINCIPAL.—A subagent, lawfully appointed, represents the principal in like manner with the original agent; and the original agent is not responsible to third persons for the acts of the subagent. Subagent rightfully appointed represents principal.

TERMINATION OF AGENCY

SEC. 1080. TERMINATION OF AGENCY.—An agency is terminated, as to every person having notice thereof, by— Termination of agency.

1. The expiration of its term;
2. The extinction of its subject;
3. The death of the agent;
4. His renunciation of the agency; or
5. The incapacity of the agent to act as such.

SEC. 1081. SAME.—Unless the power of an agent is coupled with an interest in the subject of the agency, it is terminated, as to every person having notice thereof, by—

1. Its revocation by the principal;
2. His death; or
3. His incapacity to contract.

CHAPTER 52.—FACTORS

FACTORS.

SEC. 1082. FACTOR, WHAT.—A factor is an agent, as defined by section 879. Definition. *Ante*, p. 1251.

SEC. 1083. ACTUAL AUTHORITY OF FACTOR.—In addition to the authority of agents in general, a factor has actual authority from his principal, unless specially restricted: Actual authority.

1. To insure property consigned to him uninsured;
2. To sell, on credit, anything intrusted to him for sale, except such things as it is contrary to usage to sell on credit; but not to pledge, mortgage, or barter the same; and

3. To delegate his authority to his partner or servant, but not to any person in an independent employment.

CROSS REFERENCE

Ante, p. 1251. Sale on credit by factor, see section 881.

Ostensible authority.

SEC. 1084. OSTENSIBLE AUTHORITY.—A factor has ostensible authority to deal with the property of his principal as his own, in transactions with persons not having notice of the actual ownership.

PARTNERSHIP IN GENERAL.

CHAPTER 53.—PARTNERSHIP IN GENERAL

WHAT CONSTITUTES A PARTNERSHIP

What constitutes.

SEC. 1085. PARTNERSHIP, WHAT.—Partnership is the association of two or more persons, for the purpose of carrying on business together, and dividing its profits between them.

CROSS REFERENCES

Dividing profits implies division of losses, see section 1091.

Post, p. 1272. General partnership, what, see section 1100.

Shipowners.

SEC. 1086. SHIPOWNERS.—Part owners of a ship do not, by simply using it in a joint enterprise, become partners as to the ship.

Formation of partnership.

SEC. 1087. FORMATION OF PARTNERSHIP.—A partnership can be formed only by the consent of all the parties thereto, and therefore no new partner can be admitted into a partnership without the consent of every existing member thereof.

CROSS REFERENCE

Post, p. 1275. Formation of special partnership, see sections 1124 et seq.

Partnership property.

PARTNERSHIP PROPERTY

Of what it consists.

SEC. 1088. PARTNERSHIP PROPERTY, WHAT.—The property of a partnership consists of all that is contributed to the common stock at the formation of the partnership, and all that is subsequently acquired thereby.

Partner's interest in.

SEC. 1089. PARTNER'S INTEREST IN PARTNERSHIP PROPERTY.—The interest of each member of a partnership extends to every portion of its property.

Share in profits and losses.

SEC. 1090. PARTNER'S SHARE IN PROFITS AND LOSSES.—In the absence of any agreement on the subject the shares of partners in the profit or loss of the business are equal, and the share of each in the partnership property is the value of his original contribution, increased or diminished by his share of profit or loss.

CROSS REFERENCE

Post, p. 1271. Accounting between partners, see section 1096.

When division of losses implied.

SEC. 1091. WHEN DIVISION OF LOSSES IMPLIED.—An agreement to divide the profits of a business implies an agreement for a corresponding division of its losses, unless it is otherwise expressly stipulated.

Application of partnership property to debts.

SEC. 1092. PARTNER MAY REQUIRE APPLICATION OF PARTNERSHIP PROPERTY TO PAYMENT OF DEBTS.—Each member of a partnership may require its property to be applied to the discharge of its debts, and has a lien upon the shares of the other partners for this purpose, and for the payment of the general balance, if any, due to him.

Partnership property by presumption.

SEC. 1093. WHAT PROPERTY IS PARTNERSHIP PROPERTY BY PRESUMPTION.—Property acquired with partnership funds is presumed to be partnership property.

MUTUAL OBLIGATION OF PARTNERS

Mutual obligation of partners.

Trustees for each other.

SEC. 1094. PARTNERS TRUSTEES FOR EACH OTHER.—The relations of partners are confidential. They are trustees for each other within the meaning of chapter 49 of this code, and their obligations as such trustees are defined by that chapter.

CROSS REFERENCE

Chapter 49 of this code, see sections 986 to 1009. *Ante*, p. 1258.

Good faith.

SEC. 1095. GOOD FAITH TO BE OBSERVED BETWEEN THEM.—In all proceedings connected with the formation, conduct, dissolution, and liquidation of a partnership, every partner is bound to act in the highest good faith toward his copartners. He may not obtain any advantage over them in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind.

CROSS REFERENCES

In what business partner may not engage, see sections 1106 et seq. *Post*, p. 1273.
Mutual obligations of partners, see sections 1105 et seq. *Post*, p. 1273.
Partners act in bad faith, effect of, see section 1104. *Post*, p. 1272.

Mutual liability to account.

SEC. 1096. MUTUAL LIABILITY OF PARTNERS TO ACCOUNT.—Each member of a partnership must account to it for everything that he receives on account thereof, and is entitled to reimbursement therefrom for everything that he properly expends for the benefit thereof, and to be indemnified thereby for all losses and risks which he necessarily incurs on its behalf.

CROSS REFERENCE

Partner's acts bind firm, see section 1102. *Post*, p. 1272.

No compensation for services.

SEC. 1097. NO COMPENSATION FOR SERVICES TO FIRM.—A partner is not entitled to any compensation for services rendered by him to the partnership, except by special agreement.

RENUNCIATION OF PARTNERSHIP

Renunciation of partnership.

Renunciation of future profits exonerates from liability.

SEC. 1098.—RENUNCIATION OF FUTURE PROFITS EXONERATES FROM LIABILITY.—A partner may exonerate himself from all future liability to a third person, on account of the partnership, by renouncing, in good faith, all participation in its future profits, and giving notice to such third person, and to his own copartners, that he has made such renunciation, and that, so far as may be in his power, he dissolves the partnership and does not intend to be liable on account thereof for the future.

CROSS REFERENCE

Dissolution of partnership, see sections 1113 et seq. *Post*, p. 1274.

Effect of renunciation.

SEC. 1099. EFFECT OF RENUNCIATION.—After a partner has given notice of his renunciation of the partnership, he can not claim any of its subsequent profits, and his copartners may proceed to dissolve the partnership.

CROSS REFERENCES

Post, p. 1274. Dissolution of partnership, see section 1113.
Post, p. 1275. Liquidation of partnership, see sections 1119 et seq.

GENERAL PARTNERSHIP.

CHAPTER 54.—GENERAL PARTNERSHIP

Definition.

WHAT IS A GENERAL PARTNERSHIP

SEC. 1100. GENERAL PARTNERSHIP, WHAT.—Every partnership that is not formed in accordance with the law concerning special partnerships, and every special partnership, so far only as the general partners are concerned, is a general partnership.

CROSS REFERENCES

Ante, p. 1270. Partnership, what, see section 1085.
Post, pp. 1275, 1278. Special partnerships, see sections 1124 and 1146.
Post, p. 1278. Special partnership becomes general partnership when, see section 1145.

Powers and authority of partners.

POWERS AND AUTHORITY OF PARTNERS

Majority.

SEC. 1101. POWER OF MAJORITY OF PARTNERS.—Unless otherwise expressly stipulated, the decision of the majority of the members of a general partnership binds it in the conduct of its business.

CROSS REFERENCE

Post, p. 1276. Power, rights, and duties of special partners, see section 1131 et seq.

Individual.

SEC. 1102. AUTHORITY OF INDIVIDUAL PARTNER.—Every general partner is agent for the partnership in the transaction of its business, and has authority to do whatever is necessary to carry on such business in the ordinary manner, and for this purpose may bind his copartners by an agreement in writing.

CROSS REFERENCES

Ante, p. 1271. Common liability for losses, see section 1096.
Post, p. 1273. Liability of partners for each other's acts, see section 1110.

Limitations on authority.

SEC. 1103. WHAT AUTHORITY PARTNER HAS NOT.—A partner, as such, has not authority to do any of the following acts unless his copartners have wholly abandoned the business to him or are incapable of acting:

1. To make an assignment of the partnership property or any portion thereof to a creditor, or to a third person in trust for the benefit of a creditor, or of all creditors;
2. To dispose of the good will of the business;
3. To dispose of the whole of the partnership property at once, unless it consists entirely of merchandise;
4. To do any act which would make it impossible to carry on the ordinary business of the partnership;
5. To confess a judgment;
6. To submit a partnership claim to arbitration; or
7. To do any other act not within the scope of section 1102.

Acts in bad faith ineffectual.

SEC. 1104. PARTNER'S ACTS IN BAD FAITH, WHEN INEFFECTUAL.—A partner is not bound by any act of a copartner, in bad faith toward him, though within the scope of the partner's powers, except in favor of persons who have in good faith parted with value in reliance upon such act.

CROSS REFERENCES

Good faith, duty to observe, see section 1095. *Ante*, p. 1271.
Liability of partners for each other's acts, see section 1110.
Partners are trustees for each other, see section 1094. *Ante*, p. 1271.

MUTUAL OBLIGATIONS OF PARTNERS

Mutual obligations.

SEC. 1105. PROFITS OF INDIVIDUAL PARTNER.—All profits made by a general partner, in the course of any business usually carried on by the partnership, belong to the firm.

Profits of individual partner.

CROSS REFERENCE

Mutual obligations of partners, see sections 1094 et seq. *Ante*, p. 1271.

SEC. 1106. IN WHAT BUSINESS PARTNER MAY NOT ENGAGE.—A general partner who agrees to give his personal attention to the business of the partnership may not engage in any business which gives him an interest adverse to that of the partnership or which prevents him from giving to such business all the attention which would be advantageous to it.

In what business partner may not engage.

CROSS REFERENCE

Accounting by partner, see section 1108.

SEC. 1107. IN WHAT HE MAY ENGAGE.—A partner may engage in any separate business except as otherwise provided by sections 1105 and 1106.

In what he may engage.

SEC. 1108. MUST ACCOUNT TO FIRM FOR PROFITS.—A general partner transacting business contrary to the provisions of this subchapter may be required by any copartner to account to the partnership for the profits of such business.

Must account to firm for profits.

LIABILITY OF PARTNERS

Liability of partners.

SEC. 1109. LIABILITY OF PARTNERS TO THIRD PERSONS.—Every general partner is liable to third persons for all the obligations of the partnership, jointly with his copartners.

To third persons.

CROSS REFERENCES

As to joint and several obligations generally, see sections 427 et seq. *Ante*, p. 1182.
Effect of release of one of several joint debtors, see section 488. *Ante*, p. 1190.
Liability of general partners in special partnership, see section 1139. *Post*, p. 1277.
Liability of special partners, see section 1140. *Post*, p. 1277.
Special partner liable as general partner when, see section 1141. *Post*, p. 1277.

SEC. 1110. LIABILITY FOR EACH OTHER'S ACTS AS AGENTS.—The liability of general partners for each other's acts is defined by chapter 51 of this code on agency.

Liability as agents.

CROSS REFERENCES

Acts a partner is not authorized to do, see section 1103. *Ante*, p. 1272.
Authority of individual partner, see sections 1102 and 1103. *Ante*, p. 1272.
Effect of acts of partner done in bad faith, see section 1104. *Ante*, p. 1272.
Agency, see sections 1035 to 1081. *Ante*, p. 1264.

SEC. 1111. LIABILITY OF ONE HELD OUT AS PARTNER.—Anyone permitting himself to be represented as a partner, general or special, is liable, as such, to third persons to whom such representation is communicated, and who, on the faith thereof, give credit to the partnership.

Liability of one held out as partner.

SEC. 1112. NO ONE LIABLE AS PARTNER UNLESS HELD OUT AS SUCH.—No one is liable as a partner who is not such in fact, except as provided in section 1111.

No liability unless so held out.

Termination of partnership.

TERMINATION OF PARTNERSHIP

Duration.

SEC. 1113. DURATION OF PARTNERSHIP.—If no term is prescribed by agreement for its duration, a general partnership continues until dissolved by a partner or by operation of law.

CROSS REFERENCES

Post, p. 1278. Dissolution of special partnership, see section 1145.

Post, p. 1275. Liquidation of partnership, see sections 1119 et seq.

Ante, p. 1271. Renunciation of partnership by partner, see sections 1098 and 1099.

Total dissolution.

SEC. 1114. TOTAL DISSOLUTION OF PARTNERSHIP.—A general partnership is dissolved as to all the partners—

1. By lapse of the time prescribed by agreement for its duration;

2. By the expressed will of any partner, if there is no such agreement;

3. By the death of a partner;

4. By the transfer to a person, not a partner, of the interest of any partner in the partnership property;

5. By war, or the prohibition of commercial intercourse between the country in which one partner resides and that in which another resides; or

6. By a judgment of dissolution.

CROSS REFERENCES

Post, p. 1275. Partner's power after dissolution of firm, see sections 1119 et seq.

Ante, p. 1271. Renunciation of partnership by partner, see sections 1098 and 1099.

Post, p. 1278. Special partnership, dissolution of, see section 1145.

Partial.

SEC. 1115. PARTIAL DISSOLUTION.—A general partnership may be dissolved, as to himself only, by the expressed will of any partner, notwithstanding his agreement for its continuance, subject, however, to liability to his copartners for any damage caused to them thereby, unless the circumstances are such as entitle him to a judgment of dissolution.

When partner entitled to.

SEC. 1116. PARTNER ENTITLED TO DISSOLUTION.—A general partner is entitled to a judgment of dissolution—

1. When he, or another partner, becomes legally incapable of contracting;

2. When another partner fails to perform his duties under the agreement of partnership, or is guilty of serious misconduct; or

3. When the business of the partnership can be carried on only at a permanent loss.

CROSS REFERENCE

Ante, p. 1271. Dissolution on renunciation of partnership by copartner, see section 1099.

Notice of termination.

SEC. 1117. NOTICE OF TERMINATION.—The liability of a general partner for the acts of his copartners continues, even after a dissolution of the copartnership, in favor of persons who have had dealings with and given credit to the partnership during its existence, until they have had personal notice of the dissolution; and in favor of other persons until such dissolution has been advertised in a newspaper printed in English and of general circulation in the Canal Zone, to the extent in either case to which such persons part with value in good faith, and in the belief that such partner is still a member of the firm.

CROSS REFERENCE

Post, p. 1278. Compare section 1145.

SEC. 1118. NOTICE BY CHANGE OF NAME.—A change of the partnership name, which plainly indicates the withdrawal of a partner, is sufficient notice of the fact of such withdrawal to all persons to whom it is communicated; but a change in the name, which does not contain such an indication, is not notice of the withdrawal of any partner. By change of name.

LIQUIDATION Liquidation.

SEC. 1119. POWERS OF PARTNERS AFTER DISSOLUTION.—After the dissolution of a partnership, the powers and authority of the partners are such only as are prescribed by this subchapter. Powers of partners after dissolution.

CROSS REFERENCE

Dissolution of partnership, see sections 1113 et seq. *Ante*, p. 1274.

SEC. 1120. WHO MAY ACT IN LIQUIDATION.—Any member of a general partnership may act in liquidation of its affairs, except as provided by section 1121. Who may act in liquidation.

SEC. 1121. WHO MAY NOT ACT IN LIQUIDATION.—If the liquidation of a partnership is committed, by consent of all the partners, to one or more of them, the others have no right to act therein; but their acts are valid in favor of persons parting with value, in good faith, upon credit thereof. Who may not act.

SEC. 1122. POWERS OF PARTNERS IN LIQUIDATION.—A partner authorized to act in liquidation may collect, compromise, or release any debts due to the partnership, pay or compromise any claims against it, and dispose of the partnership property. Powers.

SEC. 1123. WHAT PARTNER MAY DO IN LIQUIDATION.—A partner authorized to act in liquidation may indorse, in the name of the firm, promissory notes or other obligations held by the partnership for the purpose of collecting the same, but he can not create any new obligation in its name or revive a debt against the firm, by an acknowledgment, when an action thereon is barred under the provisions of the Code of Civil Procedure. What a partner may do.

CHAPTER 55.—SPECIAL PARTNERSHIP SPECIAL PARTNERSHIP.

FORMATION

SEC. 1124.—FORMATION OF SPECIAL PARTNERSHIP.—A special partnership may be formed by two or more persons, in the manner and with the effect prescribed in this chapter, for the transaction of any business except banking or insurance by an insurer. Formation.

CROSS REFERENCE

No partnership until compliance with law, see section 1129.

SEC. 1125. OF WHAT TO CONSIST.—A special partnership may consist of one or more persons called general partners, and one or more persons called special partners. Of what to consist.

SEC. 1126. CERTIFIED STATEMENT.—Persons desirous of forming a special partnership must severally sign a certificate, stating: Certified statement.

1. The name under which the partnership is to be conducted;
2. The general nature of the business intended to be transacted;
3. The names of all the partners, and their residences, specifying which are general and which are special partners;
4. The amount of capital which each special partner has contributed to the common stock;
5. The periods at which such partnership will begin and end.

Acknowledging and recording; false statement.
Ante, p. 1275.

SEC. 1127. ACKNOWLEDGED AND RECORDED; FALSE STATEMENT.—Certificates under section 1126 must be acknowledged by all the partners, before the clerk of the district court and filed in his office, and shall be open to public inspection. If any false statement is made in any such certificate, all the persons interested in the partnership are liable, as general partners, for all the engagements thereof.

CROSS REFERENCES

Post, p. 1277. Liability for false statements, see section 1140.

Post, p. 1277. Liability for unintentional acts, see section 1141.

Affidavit as to sums contributed.

SEC. 1128. AFFIDAVIT AS TO SUMS CONTRIBUTED.—An affidavit of each of the partners, stating that the sums specified in the certificate of the partnership as having been contributed by each of the special partners, have been actually and in good faith paid, in the lawful money of the United States, must be filed in the same office with the original certificate.

No partnership until compliance.
Ante, p. 1275.

SEC. 1129. NO PARTNERSHIP UNTIL COMPLIANCE.—No special partnership is formed until the provisions of sections 1124 to 1128 are complied with.

Renewal of.

SEC. 1130. RENEWAL OF SPECIAL PARTNERSHIP.—Every renewal or continuance of a special partnership must be certified, filed, and verified in the same manner as upon its original formation.

CROSS REFERENCE

Post, p. 1278. Compare with section 1143.

Powers, rights, and duties of partners.

POWERS, RIGHTS, AND DUTIES OF PARTNERS

General partners to do business.

SEC. 1131. WHO TO DO BUSINESS.—The general partners only have authority to transact the business of a special partnership.

Special, may advise.

SEC. 1132. SPECIAL PARTNERS MAY ADVISE.—A special partner may at all times investigate the partnership affairs, and advise his partners, or their agents, as to their management.

May loan money; insolvency.

SEC. 1133. MAY LOAN MONEY; INSOLVENCY.—A special partner may lend money to the partnership, or advance money for it, and take from it security therefor, and as to such loans or advances has the same rights as any other creditor; but in case of the insolvency of the partnership, all other claims which he may have against it must be postponed until all other creditors are satisfied.

General partners may sue and be sued.

SEC. 1134. GENERAL PARTNERS MAY SUE AND BE SUED.—In all matters relating to a special partnership, its general partners may sue and be sued alone, in the same manner as if there were no special partners.

Withdrawal of capital.

SEC. 1135. WITHDRAWAL OF CAPITAL.—No special partner, under any pretense, may withdraw any part of the capital invested by him in the partnership, during its continuance.

CROSS REFERENCE

Withdrawal of capital, see section 1137.

Interest and profits.

SEC. 1136. INTEREST AND PROFITS.—A special partner may receive such lawful interest and such proportion of profits as may be agreed upon, if not paid out of the capital invested in the partnership by him, or by some other special partner, and is not bound to refund the same to meet subsequent losses.

Result of withdrawing capital.

SEC. 1137. RESULT OF WITHDRAWING CAPITAL.—If a special partner withdraws capital from the firm, contrary to the provisions of this subchapter, he thereby becomes a general partner.

CROSS REFERENCE

Withdrawal of capital, see section 1135. *Ante*, p. 1276.

Preferential transfer void.

SEC. 1138. PREFERENTIAL TRANSFER VOID.—Every transfer of the property of a special partnership, or of a partner therein, made after or in contemplation of the insolvency of such partnership or partner, with intent to give a preference to any creditor of such partnership or partner over any other creditor of such partnership; is void against the creditors thereof; and every judgment confessed, lien created, or security given, in like manner and with the like intent, is in like manner void.

LIABILITY OF PARTNERS

Liability of partners.

General partners.

SEC. 1139. LIABILITY OF PARTNERS.—The general partners in a special partnership are liable to the same extent as partners in a general partnership.

CROSS REFERENCE

Liability of general partners, see section 1109. *Ante*, p. 1273.

Special partners.

SEC. 1140. OF SPECIAL PARTNERS.—The contribution of a special partner to the capital of the firm, and the increase thereof, is liable for its debts, but he is not otherwise liable therefor, except as follows:

1. If he has willfully made or permitted a false or materially defective statement in the certificate of the partnership, the affidavit filed therewith, or the published announcement thereof, he is liable, as a general partner, to all creditors of the firm;

2. If he has willfully interfered with the business of the firm, except as permitted in sections 1131 to 1138, he is liable in like manner; or *Ante*, p. 1276.

3. If he has willfully joined in or assented to an act contrary to any of the provisions of said sections 1131 to 1138, he is liable in like manner.

CROSS REFERENCE

False certificate, see sections 1127 and 1129. *Ante*, p. 1276.

Liability for unintentional act.

SEC. 1141. LIABILITY FOR UNINTENTIONAL ACT.—When a special partner has unintentionally done any of the acts mentioned in section 1140, he is liable, as a general partner, to any creditor of the firm who has been actually misled thereby to his prejudice.

CROSS REFERENCES

False statement in certificate, see sections 1127 and 1140. *Ante*, p. 1276.
Liability of general partners, see section 1109. *Ante*, p. 1273.

Who may question existence of special partnership.

SEC. 1142. WHO MAY QUESTION EXISTENCE OF SPECIAL PARTNERSHIP.—One who, upon making a contract with a partnership, accepts from or gives to it a written memorandum of the contract, stating that the partnership is special, and giving the names of the special partners, can not afterwards charge the persons thus named as general partners upon that contract, by reason of an error or defect in the proceedings for the creation of the special partnership, prior to the acceptance of the memorandum, if an effort has been made by the partners, in good faith, to form a special partnership in the manner required by sections 1124 to 1130. *Ante*, p. 1275.

Alteration and dissolution.

ALTERATION AND DISSOLUTION

When special becomes general.

SEC. 1143. WHEN SPECIAL PARTNERSHIP BECOMES GENERAL.—A special partnership becomes general if, within ten days after any partner withdraws from it, or any new partner is received into it, or a change is made in the nature of its business or in its name, a certificate of such fact, duly verified and signed by one or more of the partners, is not filed with the clerk of the district court.

CROSS REFERENCE

Ante, p. 1276.

Partner withdrawing capital becomes general partner, see section 1137.

Admission of new partners.

SEC. 1144. HOW NEW SPECIAL PARTNERS MAY BE ADMITTED.—New special partners may be admitted into a special partnership upon a certificate, stating the names, residences, and contributions to the common stock of each of such partners, signed by each of them, and by the general partners, verified, acknowledged, and filed with the clerk of the district court.

Dissolution of special partnership; notice.

SEC. 1145. DISSOLUTION OF SPECIAL PARTNERSHIP; NOTICE.—A special partnership is subject to dissolution in the same manner as a general partnership, except that no dissolution, by the act of the partners, is complete until a notice thereof has been filed and recorded in the office of the clerk of the district court, and published once in each week, for four successive weeks, in a newspaper of general circulation in the Canal Zone.

CROSS REFERENCE

Ante, p. 1274.

Dissolution of general partnership, see sections 1114 et seq.

Use of special partner's name.

SEC. 1146. THE NAME OF A SPECIAL PARTNER NOT USED, UNLESS.—The name of a special partner must not be used in the firm name of partnership, unless it be accompanied with the word "limited."

INSURANCE IN GENERAL.

CHAPTER 56.—INSURANCE IN GENERAL

CROSS REFERENCE

Ante, p. 1147.

Foreign insurance companies, see sections 176 to 181.[1]

DEFINITION OF INSURANCE

"Insurance," defined.

SEC. 1147. INSURANCE, WHAT.—Insurance is a contract whereby one undertakes to indemnify another against loss, damage, or liability, arising from an unknown or contingent event.

CROSS REFERENCE

Post, p. 1288.

Reinsurance contract of, see section 1236.

What may be insured.

WHAT MAY BE INSURED

What events may be insured against.

SEC. 1148. WHAT EVENTS MAY BE INSURED AGAINST.—Any contingent or unknown event, whether past or future, which may damnify a person having an insurable interest, or create a liability against him, may be insured against, subject to the provisions of this chapter.

CROSS REFERENCES

Post, p. 1279.

Insurable interest, see sections 1157 et seq.

Post, p. 1280.

Insurable interest in expectancy or inchoate interest, see sections 1158 and 1160.

[1] So in original.

Insurance of lottery, etc., unauthorized.

SEC. 1149. INSURANCE OF LOTTERY OR LOTTERY PRIZE UNAUTHORIZED.—Section 1148 does not authorize an insurance for or against the drawing of any lottery, or for or against any chance or ticket in a lottery drawing a prize.

CROSS REFERENCES

Fire insurance, see sections 1240 et seq. *Post*, p. 1288.
Life and health insurance, see sections 1245 et seq. *Post*, p. 1289.

All kinds subject to this chapter.

SEC. 1151. ALL SUBJECT TO THIS CHAPTER.—All kinds of insurance, other than marine insurance, are subject to the provisions of this chapter.

PARTIES TO CONTRACT

Parties to contract.

Designation of.

SEC. 1152. DESIGNATION OF PARTIES.—The person who undertakes to indemnify another by a contract of insurance is called the insurer, and the person indemnified is called the insured.

Who may insure.

SEC. 1153. WHO MAY INSURE.—Anyone capable of making a contract may be an insurer, subject to the restrictions imposed by special statutes upon foreign corporations, nonresidents, and others.

CROSS REFERENCE

Regulation of foreign insurance companies, see sections 176 to 181.[1] *Ante*, p. 1147.

Who may be insured.

SEC. 1154. WHO MAY BE INSURED.—Anyone except a public enemy may be insured.

Assignment to mortgagee of policy on thing insured.

SEC. 1155. ASSIGNMENT TO MORTGAGEE OF POLICY ON THING INSURED.—Unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and any act of his, prior to the loss, which would otherwise avoid the insurance will have the same effect, although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor, may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor.

New contract between insurer and assignee.

SEC. 1156. NEW CONTRACT BETWEEN INSURER AND ASSIGNEE.—If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor can not affect his rights.

INSURABLE INTEREST

Insurable interest.

Definition.

SEC. 1157. INSURABLE INTEREST, WHAT.—Every interest in property, or any relation thereto, or liability in respect thereof, of such a nature that a contemplated peril might directly damnify the insured is an insurable interest.

CROSS REFERENCES

Assignment to one without insurable interest, see section 1247. *Post*, p. 1289.
Bailees or carriers, see section 1159. *Post*, p. 1280.
Effect of transfer of interest, see section 1164. *Post*, p. 1280.
Extent of insurable interest, see section 1161. *Post*, p. 1280.
Future products insurable, see section 1160. *Post*, p. 1280.
Insurable interest in expectancy or inchoate interest, see section 1148, 1158, and 1160. *Ante*, p. 1278; *post*, p. 1280.

[1] So in original.

Post, p. 1289. Insurable interest in life or health, see section 1246.
Insurance without insurable interest is void, see section 1162.
Post, p. 1289. Life insurance, see section 1246.
Post, p. 1284. Partner, see section 1197.
Post, pp. 1282, 1283. Stating insurer's interests in policy, see sections 1177 and 1194.
Post, p. 1281. Stipulation for payment irrespective of insurable interest is void, see section 1169.
When insurable interest must exist, see section 1163.

In what may consist.

SEC. 1158. IN WHAT MAY CONSIST.—An insurable interest in property may consist in:

1. An existing interest;
2. An inchoate interest founded on an existing interest; or
3. An expectancy, coupled with an existing interest in that out of which the expectancy arises.

CROSS REFERENCES

Ante, p. 1278. Insurable interest in expectancy or inchoate interest, see sections 1148 and 1160.
Ante, p. 1278. What events may be insured against, see section 1148.

Interest of carrier or depositary.

SEC. 1159. INTEREST OF CARRIER OR DEPOSITARY.—A carrier or depositary of any kind has an insurable interest in a thing held by him as such, to the extent of its value.

Mere expectancies.

SEC. 1160. MERE EXPECTANCIES.—A mere contingent or expectant interest in anything, not founded on an actual right to the thing, nor upon any valid contract for it, is not insurable.

CROSS REFERENCES

Insurable interest in expectancy or inchoate interest, see section 1158.
Ante, p. 1278. Unknown or contingent event, insurance against, see section 1148.

Measure of interest.

SEC. 1161. MEASURE OF INTEREST IN PROPERTY.—The measure of an insurable interest in property is the extent to which the insured might be damnified by loss or injury thereof.

CROSS REFERENCE

Insurance without interest, see section 1162.

Insurance without interest illegal.

SEC. 1162. INSURANCE WITHOUT INTEREST, ILLEGAL.—The sole object of insurance is the indemnity of the insured, and if he has no insurable interest the contract is void.

CROSS REFERENCE

Post, p. 1281. Stipulation for payment irrespective of interest is void, see section 1169.

When interest must exist.

SEC. 1163. WHEN INTEREST MUST EXIST.—An interest insured must exist when the insurance takes effect, and when the loss occurs, but need not exist in the meantime.

Effect of transfer.

SEC. 1164. EFFECT OF TRANSFER.—Except in the cases specified in sections 1165 to 1168, and in the cases of life, accident, and health insurance, a change of interest in any part of a thing insured, unaccompanied by a corresponding change of interest in the insurance, suspends the insurance to an equivalent extent, until the interest in the thing and the interest in the insurance are vested in the same person.

CROSS REFERENCES

Transfer by coowner or partner, see section 1168.
Transfer by operation of law, see section 1167.[1]
Transfer of life-insurance policy, see section 1247. *Post*, p. 1289.
Transfer of thing insured does not transfer policy, see section 1200. *Post*, p. 1284.

Transfer after loss.

SEC. 1165. TRANSFER AFTER LOSS.—A change of interest in a thing insured, after the occurrence of an injury which results in a loss, does not affect the right of the insured to indemnity for the loss.

Exception where several subjects in one policy.

SEC. 1166. EXCEPTION IN THE CASE OF SEVERAL SUBJECTS IN ONE POLICY.—A change of interest in one or more of several distinct things, separately insured by one policy, does not avoid the insurance as to the others.

Transfer between cotenants.

SEC. 1168. IN THE CASE OF TRANSFER BETWEEN COTENANTS.—A transfer of interest by one of several partners, joint owners, or owners in common, who are jointly insured, to the others, does not avoid an insurance, even though it has been agreed that the insurance shall cease upon an alienation of the thing insured.

CROSS REFERENCE

Insurance by partner or cotenant, see section 1197. *Post*, p. 1284.

Policy, when void.

SEC. 1169. POLICY, WHEN VOID.—Every stipulation in a policy of insurance for the payment of loss whether the person insured has or has not any interest in the property insured, or that the policy shall be received as proof of such interest and every policy executed by way of gaming or wagering, is void.

CROSS REFERENCE

Insurance without interest is illegal, see section 1162. *Ante*, p. 1280.

Concealment and representations.

CONCEALMENT AND REPRESENTATIONS

Concealment, defined.

SEC. 1170. CONCEALMENT, WHAT.—A neglect to communicate that which a party knows, and ought to communicate, is called a concealment.

CROSS REFERENCE

"Party" refers to either party to the contract, see section 1172.

Effect of.

SEC. 1171. EFFECT OF CONCEALMENT.—A concealment, whether intentional or unintentional, entitles the injured party to rescind a contract of insurance.

What must be disclosed.

SEC. 1172. WHAT MUST BE DISCLOSED.—Each party to a contract of insurance must communicate to the other, in good faith, all facts within his knowledge which are or which he believes to be material to the contract, and which the other has not the means of ascertaining, and as to which he makes no warranty.

Matters which need not be communicated.

SEC. 1173. MATTERS WHICH NEED NOT BE COMMUNICATED WITHOUT INQUIRY.—Neither party to a contract of insurance is bound to communicate information of the matters following, except in answer to the inquiries of the other:

1. Those which the other knows;
2. Those which, in the exercise of ordinary care, the other ought to know, and of which the former has no reason to suppose him ignorant;
3. Those of which the other waives communication;
4. Those which prove or tend to prove the existence of a risk excluded by a warranty, and which are not otherwise material; and

[1] So in original.

5. Those which relate to a risk excepted from the policy, and which are not otherwise material.

CROSS REFERENCES

Facts covered by warranty, see section 1178.
Information as to nature of amount of interest, see section 1177.
Matters of opinion, see section 1179.
Waiver of communication, see section 1176.

Test of materiality.

SEC. 1174. TEST OF MATERIALITY.—Materiality is to be determined not by the event, but solely by the probable and reasonable influence of the facts upon the party to whom the communication is due, in forming his estimate of the disadvantages of the proposed contract or in making his inquiries.

CROSS REFERENCE

Post, p. 1283.

Materiality of representation, see section 1190.

Matters which each is bound to know.

SEC. 1175. MATTERS WHICH EACH IS BOUND TO KNOW.—Each party to a contract of insurance is bound to know all the general causes which are open to his inquiry, equally with that of the other, and which may affect either the political or material perils contemplated; and all general usages of trade.

Waiver of communication.

SEC. 1176. WAIVER OF COMMUNICATION.—The right to information of material facts may be waived, either by the terms of insurance or by neglect to make inquiries as to such facts, where they are distinctly implied in other facts of which information is communicated.

Interest of insured.

SEC. 1177. INTEREST OF INSURED.—Information of the nature or amount of the interest of one insured need not be communicated unless in answer to an inquiry, except as prescribed by section 1194.

Post, p. 1283.

Fraudulent warranty.

SEC. 1178. FRAUDULENT WARRANTY.—An intentional and fraudulent omission, on the part of one insured, to communicate information of matters proving or tending to prove the falsity of a warranty, entitles the insurer to rescind.

CROSS REFERENCES

Ante, p. 1281.

Effect of concealment, see section 1171.

Post, p. 1284.

Warranties, see section 1207 et seq.

Matters of opinion.

SEC. 1179. MATTERS OF OPINION.—Neither party to a contract of insurance is bound to communicate, even upon inquiry, information of his own judgment upon the matters in question.

How representation made.

SEC. 1180. REPRESENTATION, HOW MADE.—A representation may be oral or written.

When made.

SEC. 1181. WHEN MADE.—A representation may be made at the same time with issuing the policy, or before it.

CROSS REFERENCE

Post, p. 1284.

Warranties, see sections 1207 and 1208.

How interpreted.

SEC. 1182. HOW INTERPRETED.—The language of a representation is to be interpreted by the same rules as the language of contracts in general.

CROSS REFERENCE

Ante, p. 1197.

Interpretation of contracts, see sections 546 et seq.

Representation as to future.

SEC. 1183. REPRESENTATION AS TO FUTURE.—A representation as to the future is to be deemed a promise, unless it appears that it was merely a statement of belief or expectation.

How affect policy.

SEC. 1184. HOW MAY AFFECT POLICY.—A representation can not be allowed to qualify an express provision in a contract of insurance, but it may qualify an implied warranty.

When may be withdrawn.

SEC. 1185. WHEN MAY BE WITHDRAWN.—A representation may be altered or withdrawn before the insurance is effected, but not afterwards.

Time intended by representation.

SEC. 1186. TIME INTENDED BY REPRESENTATION.—The completion of the contract of insurance is the time to which a representation must be presumed to refer.

Representing information.

SEC. 1187. REPRESENTING INFORMATION.—When a person insured has no personal knowledge of a fact, he may nevertheless repeat information which he has upon the subject, and which he believes to be true, with the explanation that he does so on the information of others, or he may submit the information, in its whole extent, to the insurer; and in neither case is he responsible for its truth, unless it proceeds from an agent of the insured, whose duty it is to give the intelligence.

Falsity.

SEC. 1188. FALSITY.—A representation is to be deemed false when the facts fail to correspond with its assertions or stipulations.

Effect of.

SEC. 1189. EFFECT OF FALSITY.—If a representation is false in a material point, whether affirmative or promissory, the injured party is entitled to rescind the contract from the time when the representation becomes false.

Materiality.

SEC. 1190. MATERIALITY.—The materiality of a representation is determined by the same rule as the materiality of a concealment.

CROSS REFERENCES

Materiality of representation, how determined, see section 1174. *Ante*, p. 1282.
Violation of material warranty, see section 1214. *Post*, p. 1285.

Application of this subchapter.

SEC. 1191. APPLICATION OF PROVISIONS OF THIS SUBCHAPTER.—The provisions of this subchapter apply as well to a modification of a contract of insurance as to its original formation.

Right to rescind.

SEC. 1192. RIGHT TO RESCIND.—Whenever a right to rescind a contract of insurance is given to the insurer by any provision of this chapter, such right may be exercised at any time previous to the commencement of an action on the contract.

THE POLICY

The policy.

Definition.

SEC. 1193. POLICY, WHAT.—The written instrument, in which a contract of insurance is set forth, is called a policy of insurance.

What must specify.

SEC. 1194. WHAT MUST BE SPECIFIED IN A POLICY.—A policy of insurance must specify:

1. The parties between whom the contract is made;
2. The rate of premium;
3. The property or life insured;
4. The interest of the insured in property insured, if he is not the absolute owner thereof;
5. The risks insured against; and
6. The period during which the insurance is to continue.

Whose interest covered.

SEC. 1195. WHOSE INTEREST IS COVERED.—When the name of the person intended to be insured is specified in a policy, it can be applied only to his own proper interest.

CROSS REFERENCES

Insurable interest, generally, see section 1157. *Ante*, p. 1279.
Stating interest of insured, see section 1177. *Ante*, p. 1282.

Insurance by agent or trustee.

SEC. 1196. INSURANCE BY AGENT OR TRUSTEE.—When an insurance is made by an agent or trustee, the fact that his principal or beneficiary is the person really insured may be indicated by describing him as agent or trustee, or by other general words in the policy.

By part owner.

SEC. 1197. INSURANCE BY PART OWNER.—To render an insurance, effected by one partner or part owner, applicable to the interest of his copartners, or of other part owners, it is necessary that the terms of the policy should be such as are applicable to the joint or common interest.

CROSS REFERENCE

Ante, p. 1281.

Transfer by coowner, see section 1168.

General terms.

SEC. 1198. GENERAL TERMS.—When the description of the insured in a policy is so general that it may comprehend any person or any class of persons, he only can claim the benefit of the policy who can show that it was intended to include him.

Successive owners.

SEC. 1199. SUCCESSIVE OWNERS.—A policy may be so framed that it will inure to the benefit of whomsoever, during the continuance of the risk, may become the owner of the interest insured.

Transfer of thing insured.

SEC. 1200. TRANSFER OF THE THING INSURED.—The mere transfer of a thing insured does not transfer the policy, but suspends it until the same person becomes the owner of both the policy and the thing insured.

CROSS REFERENCE

Ante, p. 1281.

Transfer of interest, see sections 1164 et seq.

Open and valued policies.

SEC. 1201. OPEN AND VALUED POLICIES.—A policy is either open or valued.

Open policy.

SEC. 1202. OPEN POLICY, WHAT.—An open policy is one in which the value of the thing insured is not agreed upon, but is left to be ascertained in case of loss.

Valued policy.

SEC. 1203. VALUED POLICY, WHAT.—A valued policy is one which expresses on its face an agreement that the thing insured shall be valued at a specified sum.

Running policy.

SEC. 1204. RUNNING POLICY, WHAT.—A running policy is one which contemplates successive insurances, and which provides that the object of the policy may be from time to time defined, especially as to the subjects of insurance, by additional statements or indorsements.

Effect of receipt.

SEC. 1205. EFFECT OF RECEIPT.—An acknowledgment in a policy of the receipt of premium is conclusive evidence of its payment, so far as to make the policy binding, notwithstanding any stipulation therein that it shall not be binding until the premium is actually paid.

CROSS REFERENCE

Post, p. 1285.

Premiums, in general, see sections 1217 et seq.

Agreement not to transfer.

SEC. 1206. AGREEMENT NOT TO TRANSFER.—An agreement made before a loss, not to transfer the claim of a person insured against the insurer, after the loss has happened, is void.

Warranties.

WARRANTIES

Express or implied.

SEC. 1207. WARRANTY, EXPRESS OR IMPLIED.—A warranty is either express or implied.

CROSS REFERENCE

Post, p. 1285.

Express warranties to be in policy, see section 1209.

SEC. 1208. FORM.—No particular form of words is necessary to create a warranty. Form.

SEC. 1209. EXPRESS WARRANTIES TO BE IN POLICY.—Every express warranty, made at or before the execution of a policy, must be contained in the policy itself, or in another instrument signed by the insured and referred to in the policy, as making a part of it. Express warranties to be in policy.

CROSS REFERENCE

Representations, see sections 1180 et seq. *Ante*, p. 1282.

SEC. 1210. PAST, PRESENT, AND FUTURE WARRANTIES.—A warranty may relate to the past, the present, the future, or to any or all of these. Time.

SEC. 1211. EXPRESS WARRANTY, WHAT CONSTITUTES.—A statement in a policy, of a matter relating to the person or thing insured, or to the risk, as a fact, is an express warranty thereof. What constitutes express warranty.

SEC. 1212. WARRANTY AS TO THE FUTURE.—A statement in a policy, which imports that it is intended to do or not to do a thing which materially affects the risk, is a warranty that such act or omission shall take place. Warranty as to future.

SEC. 1213. PERFORMANCE EXCUSED.—When before the time arrives for the performance of a warranty relating to the future, a loss insured against happens, or performance becomes unlawful at the place of the contract, or impossible, the omission to fulfill the warranty does not avoid the policy. Performance excused.

CROSS REFERENCE

Rescinding contract of insurance, see section 1192. *Ante*, p. 1283.

SEC. 1214. WHAT ACTS AVOID THE POLICY.—The violation of a material warranty, or other material provision of a policy, on the part of either party thereto, entitles the other to rescind. What acts avoid policy.

CROSS REFERENCE

Test of the materiality of a representation, see section 1190. *Ante*, p. 1283.

SEC. 1215. POLICY MAY PROVIDE FOR AVOIDANCE.—A policy may declare that a violation of specified provisions thereof shall avoid it; otherwise the breach of an immaterial provision does not avoid the policy. Policy may provide for avoidance.

SEC. 1216. BREACH WITHOUT FRAUD.—A breach of warranty, without fraud, merely exonerates an insurer from the time that it occurs, or where it is broken in its inception prevents the policy from attaching to the risk. Breach without fraud.

CROSS REFERENCE

Breach of warranty without fraud, return of premium, see section 1220. *Post*, p. 1286.

PREMIUM Premium.

SEC. 1217. WHEN PREMIUM IS EARNED [1]. When earned.

CROSS REFERENCE

Receipt in policy, how far conclusive of payment, see section 1205. *Ante*, p. 1284.

SEC. 1218. RETURN OF PREMIUM.—A person insured is entitled to a return of premium, as follows: Return of premium.

Where the insurance is made for a definite period of time, and the insured surrenders his policy, to such proportion of the premium above the customary short rate premium as corresponds with the

[1] So in original.

unexpired time, after deducting from the whole premium any claim for loss or damage under the policy which has previously accrued.

CROSS REFERENCE

Return for fraud, see section 1220.

When not allowed.

SEC. 1219. WHEN NOT ALLOWED.—If a peril insured against has existed, and the insurer has been liable for any period, however short, the insured is not entitled to return of premiums so far as that particular risk is concerned.

Return for fraud.

SEC. 1220. RETURN FOR FRAUD.—A person insured is entitled to a return of the premium when the contract is voidable, on account of the fraud or misrepresentation of the insurer, or on account of facts, of the existence of which the insured was ignorant without his fault; or when, by any default of the insured other than actual fraud, the insurer never incurred any liability under the policy.

CROSS REFERENCE

Ante, p. 1285. Return of premium, see section 1218.

Overinsurance by several insurers.

SEC. 1221. OVERINSURANCE BY SEVERAL INSURERS.—In case of an overinsurance by several insurers, the insured is entitled to a ratable return for the premium, proportioned to the amount by which the aggregate sum insured in all the policies exceeds the insurable value of the thing at risk.

CROSS REFERENCE

Post, p. 1287. Double insurance, defined, see section 1234.

Contribution.

SEC. 1222. CONTRIBUTION.—When an overinsurance is affected by simultaneous policies, the insurers contribute to the premium to be returned in proportion to the amount insured by their respective policies.

CROSS REFERENCE

Post, p. 1287. Contribution in cases of double insurance, see section 1235.

Proportionate contribution.

SEC. 1223. PROPORTIONATE CONTRIBUTION.—When an overinsurance is effected by successive policies, those only contribute to a return of the premium who are exonerated by prior insurance from the liability assumed by them, and in proportion as the sum for which the premium was paid exceeds the amount for which, on account of prior insurance, they could be made liable.

Loss.

LOSS

Perils, remote and proximate.

SEC. 1224. PERILS, REMOTE AND PROXIMATE.—An insurer is liable for a loss of which a peril insured against was the proximate cause, although a peril not contemplated by the contract may have been a remote cause of the loss; but he is not liable for a loss of which the peril insured against was only a remote cause.

CROSS REFERENCE

Post, p. 1287. Negligence of insured, see section 1227.

Loss incurred in rescue.

SEC. 1225. LOSS INCURRED IN RESCUE FROM PERIL.—An insurer is liable where the thing insured is rescued from a peril insured against, that would otherwise have caused a loss, if in the course of such rescue the thing is exposed to a peril not insured against, which permanently deprives the insured of its possession, in whole or in part; or where a loss is caused by efforts to rescue the thing insured from a peril insured against.

Excepted perils.

SEC. 1226. EXCEPTED PERILS.—Where a peril is specially excepted in a contract of insurance, a loss, which would not have occurred but for such peril, is thereby excepted, although the immediate cause of the loss was a peril which was not excepted.

Negligence and fraud.

SEC. 1227. NEGLIGENCE AND FRAUD.—An insurer is not liable for a loss caused by the willful act of the insured; but he is not exonerated by the negligence of the insured, or of his agents or others.

NOTICE OF LOSS

Notice of loss.

SEC. 1228. NOTICE OF LOSS.—In case of loss upon an insurance against fire, an insurer is exonerated if notice thereof be not given to him by some person insured, or entitled to the benefit of the insurance, without unnecessary delay.

Time for giving notice.

SEC. 1229. TIME FOR GIVING NOTICE OF ACCIDENTS, ETC.—No conditions, stipulations, or agreements contained in any application for insurance in any casualty or accident insurance company, or contained in any policy issued by any such company, or in any way made by any such company, limiting the time within which notice of the accident or injury, or death, shall be given to such company to a period of less than twenty days after the happening of the accident, or injury, or death, shall be valid. Said notice may be given to the company insuring, at any time within twenty days after the happening of the accident, or injury, or death, and shall be valid and binding on the company; and notice deposited in the mails properly addressed within the time stated is sufficient, though it does not reach the insurer within that time.

Preliminary proofs.

SEC. 1230. PRELIMINARY PROOFS.—When preliminary proof of loss is required by a policy, the insured is not bound to give such proof as would be necessary in a court of justice; but it is sufficient for him to give the best evidence which he has in his power at the time.

Waiver of defects in notice, etc.

SEC. 1231. WAIVER OF DEFECTS IN NOTICE, ETC.—All defects in a notice of loss, or in preliminary proof thereof, which the insured might remedy, and which the insurer omits to specify to him, without unnecessary delay, as grounds of objection, are waived.

Waiver of delay.

SEC. 1232. WAIVER OF DELAY.—Delay in the presentation to an insurer of notice or proof of loss is waived, if caused by any act of his, or if he omits to make objection promptly and specifically upon that ground.

When certificate dispensed with.

SEC. 1233. CERTIFICATE, WHEN DISPENSED WITH.—If a policy requires, by way of preliminary proof of loss, the certificate or testimony of a person other than the insured, it is sufficient for the insured to use reasonable diligence to procure it, and in case of the refusal of such person to give it, then to furnish reasonable evidence to the insurer that such refusal was not induced by any just grounds of disbelief in the facts necessary to be certified.

DOUBLE INSURANCE

Double insurance.

SEC. 1234. DOUBLE INSURANCE.—A double insurance exists where the same person is insured by several insurers separately in respect to the same subject and interest.

Contribution in case of.

SEC. 1235. CONTRIBUTION IN CASE OF DOUBLE INSURANCE.—In case of double fire insurance, each insurer must contribute ratably toward the loss, without regard to the dates of the several policies.

CROSS REFERENCE

Return of premium by successive insurers, see sections 1221 and 1223. *Ante*, p. 1286.

REINSURANCE

Reinsurance. Definition.

SEC. 1236. REINSURANCE, WHAT.—A contract of reinsurance is one by which an insurer procures a third person to insure him against loss or liability by reason of such original insurance.

Disclosures required.

SEC. 1237. DISCLOSURES REQUIRED.—Where an insurer obtains reinsurance, he must communicate all the representations of the original insured, and also all the knowledge and information he possesses, whether previously or subsequently acquired, which are material to the risk.

Reinsurance presumed to be against liability.

SEC. 1238. REINSURANCE PRESUMED TO BE AGAINST LIABILITY.—A reinsurance is presumed to be a contract of indemnity against liability and not merely against damage.

Original insured has no interest.

SEC. 1239. ORIGINAL INSURED HAS NO INTEREST.—The original insured has no interest in a contract of reinsurance.

FIRE INSURANCE.

CHAPTER 57.—FIRE INSURANCE

CROSS REFERENCES

Ante, p. 1279.

Chapter 56 of this code is also applicable to fire insurance, see section 1151.

Ante, p. 1147.

Foreign insurance companies, see sections 176 to 181.[1]

Alteration increasing risk.

SEC. 1240. ALTERATION INCREASING RISK.—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, made without the consent of the insurer, by means within the control of the insured, and increasing the risk, entitles an insurer to rescind a contract of fire insurance.

Not increasing risk.

SEC. 1241. ALTERATION NOT INCREASING RISK.—An alteration in the use or condition of a thing insured from that to which it is limited by the policy, which does not increase the risk, does not affect a contract of fire insurance.

Acts of insured.

SEC. 1242. ACTS OF INSURED.—A contract of fire insurance is not affected by any act of the insured subsequent to the execution of the policy, which does not violate its provisions, even though it increases the risk and is the cause of a loss.

Measure of indemnity.

SEC. 1243. MEASURE OF INDEMNITY.—If there is no valuation in the policy, the measure of indemnity in an insurance against fire is the expense it would be to the insured at the time of the commencement of the fire to replace the thing lost or injured in the condition in which it was at the time of the injury; but the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance.

Value of interest in policy; how fixed; total or partial loss.

SEC. 1244. VALUE OF INTEREST IN POLICY OF INSURANCE; HOW MAY BE FIXED; TOTAL OR PARTIAL LOSS.—Whenever the insured desires to have a valuation named in his policy, insuring any building or structure against fire, he may require such building or structure to be examined by the insurer, and the value of the insured's interest therein shall be thereupon fixed by the parties. The cost of such examination shall be paid for by the insured. A clause shall be inserted in such policy stating substantially that the value of the insured's interest in such building or structure has been thus fixed. In the absence of any change increasing the risk without the consent of the insurer or of fraud on the part of the insured, then, in case of a total loss under such policy, the whole amount so insured upon the insured's interest in such building or structure, as stated in the policy upon which the insurers have received a premium, shall be paid, and in case of a partial loss the full amount of the partial loss shall be so paid, and in case there are two or more policies covering the insured's interest therein, each policy shall contribute

[1] So in original.

pro rata to the payment of such whole or partial loss. But in no case shall the insurer be required to pay more than the amount thus stated in such policy. This section shall not prevent the parties from stipulating in such policies concerning the repairing, rebuilding, or replacing buildings or structures wholly or partially damaged or destroyed.

CHAPTER 58.—LIFE AND HEALTH INSURANCE

LIFE AND HEALTH INSURANCE.

CROSS REFERENCES

Chapter 56 of this code is also applicable to life insurance, see section 1151. *Ante*, p. 1279.
Foreign insurance companies, see sections 176 to 181.[1] *Ante*, p. 1148.

When insurance upon life payable.

SEC. 1245. INSURANCE UPON LIFE, WHEN PAYABLE.—An insurance upon life may be made payable on the death of the person, or on his surviving a specified period, or periodically so long as he shall live, or otherwise contingently on the continuance or determination of life.

Insurable interest.

SEC. 1246. INSURABLE INTEREST.—Every person has an insurable interest in the life and health—

1. Of himself;
2. Of any person on whom he depends wholly or in part for education or support;
3. Of any person under a legal obligation to him for the payment of money, or respecting property or services, of which death or illness might delay or prevent the performance; and
4. Of any person upon whose life any estate or interest vested in him depends.

CROSS REFERENCE

Insurable interest, generally, see sections 1157 et seq. *Ante*, p. 1279.

Assignee, etc., of life policy need have no interest.

SEC. 1247. ASSIGNEE, ETC., OF LIFE POLICY NEED HAVE NO INTEREST.—A policy of insurance upon life or health may pass by transfer, will, or succession to any person, whether he has an insurable interest or not, and such person may recover upon it whatever the insured might have recovered.

CROSS REFERENCE

Compare section 1164. *Ante*, p. 1280.

Notice of transfer.

SEC. 1248. NOTICE OF TRANSFER.—Notice to an insurer of a transfer or bequest thereof is not necessary to preserve the validity of a policy of insurance upon life or health, unless thereby expressly required.

Measure of indemnity.

SEC. 1249.—MEASURE OF INDEMNITY.—Unless the interest of a person insured is susceptible of exact pecuniary measurement, the measure of indemnity under a policy of insurance upon life or health is the sum fixed in the policy.

Disposition by beneficiary of interest in installment.

SEC. 1250. DISPOSITION BY BENEFICIARY OF INTEREST IN INSTALLMENT.—The beneficiary under a policy of life insurance, providing for the payment of the proceeds thereof in periodical installments, may be restrained from disposing of or encumbering his interest in any such installment, prior to the date when it shall become due and payable by the insurer, by a condition or stipulation in the policy.

Payment of proceeds.

SEC. 1251. PAYMENT OF PROCEEDS OF POLICY.—The proceeds of every policy of insurance due on the death of insured shall by the insurer be paid either to the beneficiary designated therein, or, if no beneficiary is designated therein, to the estate of insured; or, if the policy has been assigned, to the assignee thereof; and such payment shall satisfy all obligations of the insurer with respect to said policy.

[1] So in original.

INDEMNITY.

CHAPTER 59.—INDEMNITY

Definition.

SEC. 1251-a. INDEMNITY, WHAT.—Indemnity is a contract by which one engages to save another from a legal consequence of the conduct of one of the parties, or of some other person.

CROSS REFERENCES

Post, p. 1291. Guaranty, see sections 1261 et seq.

Post, p. 1294. Suretyship, see sections 1285 et seq.

Indemnity for future wrongful act void.

SEC. 1252. INDEMNITY FOR A FUTURE WRONGFUL ACT VOID.—An agreement to indemnify a person against an act thereafter to be done, is void, if the act be known by such person at the time of doing it to be unlawful.

For past wrongful act valid.

SEC. 1253. INDEMNITY FOR A PAST WRONGFUL ACT VALID.—An agreement to indemnify a person against an act already done, is valid, even though the act was known to be wrongful, unless it was a felony.

Indemnity extends to agents.

SEC. 1254. INDEMNITY EXTENDS TO ACTS OF AGENTS.—An agreement to indemnify against the acts of a certain person, applies not only to his acts and their consequences, but also to those of his agents.

Indemnity to several.

SEC. 1255. INDEMNITY TO SEVERAL.—An agreement to indemnify several persons applies to each, unless a contrary intention appears.

Person indemnifying, liable jointly or severally.

SEC. 1256. PERSON INDEMNIFYING LIABLE JOINTLY OR SEVERALLY WITH PERSON INDEMNIFIED.—One who indemnifies another against an act to be done by the latter is liable jointly with the person indemnified, and separately, to every person injured by such act.

Rules for interpreting agreement.

SEC. 1257. RULES FOR INTERPRETING AGREEMENT OF INDEMNITY.—In the interpretation of a contract of indemnity the following rules are to be applied, unless a contrary intention appears:

1. Upon an indemnity against liability, expressly, or in other equivalent terms, the person indemnified is entitled to recover upon becoming liable.

2. Upon an indemnity against claims, or demands, or damages, or costs, expressly, or in other equivalent terms, the person indemnified is not entitled to recover without payment thereof.

3. An indemnity against claims, or demands, or liability, expressly, or in other equivalent terms, embraces the costs of defense against such claims, demands, or liability incurred in good faith and in the exercise of a reasonable discretion.

4. The person indemnifying is bound, on request of the person indemnified, to defend actions or proceedings brought against the latter in respect to the matters embraced by the indemnity, but the person indemnified has the right to engage in the conduct of such defenses, if he chooses to do so.

5. If, after request, the person indemnifying neglects to defend the person indemnified, a recovery against the latter suffered by him in good faith is conclusive in his favor against the former.

6. If the person indemnifying, whether he is a principal or a surety in the agreement, has not reasonable notice of the action or proceeding against the person indemnified, or is not allowed to control its defense, judgment against the latter is only presumptive evidence against the former.

7. A stipulation that a judgment against the person indemnified shall be conclusive upon the person indemnifying, is inapplicable if he had a good defense upon the merits, which by want of ordinary care he failed to establish in the action.

Reimbursement of person indemnifying other.

SEC. 1258. REIMBURSEMENT OF PERSON INDEMNIFYING OTHER.—Where one, at the request of another, engages to answer in damages, whether liquidated or unliquidated, for any violation of duty on the part of the latter, he is entitled to be reimbursed in the same manner as a surety for whatever he may pay.

Bail, defined.

SEC. 1259. BAIL, WHAT.—Upon those contracts of indemnity which are taken in legal proceedings as security for the performance of an obligation imposed or declared by the tribunals, and known as undertakings or recognizances, the sureties are called bail.

How regulated.

SEC. 1260. HOW REGULATED.—The obligations of bail are governed by the law specially applicable thereto.

CHAPTER 60.—GUARANTY IN GENERAL

GUARANTY IN GENERAL.

DEFINITION OF GUARANTY

Definition.

SEC. 1261. GUARANTY, WHAT.—A guaranty is a promise to answer for the debt, default, or miscarriage of another person.

CROSS REFERENCES

Indemnity, see sections 1251–a et seq. *Ante*, p. 1290.
Suretyship, see sections 1285 et seq. *Post*, p. 1294.

CREATION OF GUARANTY

Creation of.

Knowledge of principal not necessary.

SEC. 1262. KNOWLEDGE OF PRINCIPAL NOT NECESSARY.—A person may become guarantor even without the knowledge or consent of the principal.

Necessity of consideration.

SEC. 1263. NECESSITY OF A CONSIDERATION.—Where a guaranty is entered into at the same time with the original obligation, or with the acceptance of the latter by the guarantee, and forms with that obligation a part of the consideration to him, no other consideration need exist. In all other cases there must be a consideration distinct from that of the original obligation.

Guaranty to be in writing, etc.

SEC. 1264. GUARANTY TO BE IN WRITING, ETC.—Except as prescribed by section 1265, a guaranty must be in writing, and signed by the guarantor; but the writing need not express a consideration.

CROSS REFERENCE

Guaranty, to be written, see section 541 (2). *Ante*, p. 1197.

Engagement to answer for obligation of another, when deemed original.

SEC. 1265. ENGAGEMENT TO ANSWER FOR OBLIGATION OF ANOTHER, WHEN DEEMED ORIGINAL.—A promise to answer for the obligation of another, in any of the following cases, is deemed an original obligation of the promisor, and need not be in writing:

1. Where the promise is made by one who has received property of another upon an undertaking to apply it pursuant to such promise, or by one who has received a discharge from an obligation in whole or in part in consideration of such promise.

2. Where the creditor parts with value, or enters into an obligation, in consideration of the obligation in respect to which the promise is made, in terms or under circumstances such as to render the party making the promise the principal debtor, and the person in whose behalf it is made, his surety.

3. Where the promise, being for an antecedent obligation of another, is made upon the consideration that the party receiving it cancels the antecedent obligation, accepting the new promise as a substitute therefor; or upon the consideration that the party receiving it releases the property of another from a levy, or his person from imprisonment under an execution on a judgment obtained upon

the antecedent obligation; or upon a consideration beneficial to the promisor, whether moving from either party to the antecedent obligation or from another person.

4. Where a factor undertakes, for a commission, to sell merchandise and guarantee the sale.

5. Where the holder of an instrument for the payment of money, upon which a third person is or may become liable to him, transfers it in payment of a precedent debt of his own, or for a new consideration, and in connection with such transfer enters into a promise respecting such instrument.

CROSS REFERENCE

Ante, p. 1197. Guaranty, necessity of writing, see section 541.

Acceptance of guaranty.

SEC. 1266. ACCEPTANCE OF GUARANTY.—A mere offer to guarantee is not binding until notice of its acceptance is communicated by the guarantee to the guarantor; but an absolute guaranty is binding upon the guarantor without notice of acceptance.

CROSS REFERENCE

Absolute guaranty, see section 1271.

Interpretation of.

INTERPRETATION OF GUARANTY

Guaranty of incomplete contract.

SEC. 1267. GUARANTY OF INCOMPLETE CONTRACT.—In a guaranty of a contract, the terms of which are not then settled, it is implied that its terms shall be such as will not expose the guarantor to greater risks than he would incur under those terms which are most common in similar contracts at the place where the principal contract is to be performed.

That an obligation is good or collectible.

SEC. 1268. GUARANTY THAT AN OBLIGATION IS GOOD OR COLLECTIBLE.—A guaranty to the effect that an obligation is good, or is collectible, imports that the debtor is solvent and that the demand is collectible by the usual legal proceedings, if taken with reasonable diligence.

Recovery upon.

SEC. 1269. RECOVERY UPON SUCH GUARANTY.—A guaranty, such as is mentioned in section 1268, is not discharged by an omission to take proceedings upon the principal debt, or upon any collateral security for its payment, if no part of the debt could have been collected thereby.

Guarantor's liability.

SEC. 1270. GUARANTOR'S LIABILITY UPON SUCH GUARANTY.—In the cases mentioned in section 1268, the removal of the principal from the Canal Zone, leaving no property therein from which the obligation might be satisfied, is equivalent to the insolvency of the principal in its effect upon the rights and obligations of the guarantor.

Liability of guarantors.

LIABILITY OF GUARANTORS

Guaranty construed.

SEC. 1271. GUARANTY, HOW CONSTRUED.—A guaranty is to be deemed unconditional unless its terms import some condition precedent to the liability of the guarantor.

Liability upon guaranty of payment or performance.

SEC. 1272. LIABILITY UPON GUARANTY OF PAYMENT OR PERFORMANCE.—A guarantor of payment or performance is liable to the guarantee immediately upon the default of the principal, and without demand or notice.

Of conditional obligation.

SEC. 1273. LIABILITY UPON GUARANTY OF CONDITIONAL OBLIGATION.—Where one guarantees a conditional obligation, his liability is commensurate with that of the principal, and he is not entitled to notice of the default of the principal, unless he is unable, by the exercise of reasonable diligence, to acquire information of such default, and the creditor has actual notice thereof.

Obligation not to exceed that of principal.

SEC. 1274. OBLIGATION OF GUARANTOR CAN NOT EXCEED THAT OF THE PRINCIPAL.—The obligation of a guarantor must be neither larger in amount nor in other respects more burdensome than that of the principal; and if in its terms it exceeds it, it is reducible in proportion to the principal obligation.

Illegal contracts.

SEC. 1275. GUARANTOR NOT LIABLE ON ILLEGAL CONTRACT.—A guarantor is not liable if the contract of the principal is unlawful; but he is liable notwithstanding any mere personal disability of the principal, though the disability be such as to make the contract void against the principal.

Continuing guaranty.

CONTINUING GUARANTY

Definition.

SEC. 1276. CONTINUING GUARANTY, WHAT.—A guaranty relating to a future liability of the principal, under successive transactions, which either continue his liability or from time to time renew it after it has been satisfied, is called a continuing guaranty.

Revocation.

SEC. 1277. REVOCATION.—A continuing guaranty may be revoked at any time by the guarantor, in respect to future transactions, unless there is a continuing consideration as to such transactions which he does not renounce.

Exoneration of guarantors.

EXONERATION OF GUARANTORS

What dealings with debtor exonerate.

SEC. 1278. WHAT DEALINGS WITH DEBTOR EXONERATE GUARANTOR.—A guarantor is exonerated, except so far as he may be indemnified by the principal, if by any act of the creditor, without the consent of the guarantor, the original obligation of the principal is altered in any respect, or the remedies or rights of the creditor against the principal, in respect thereto, in any way impaired or suspended.

CROSS REFERENCES

Exoneration of surety, see sections 1290 and 1291. *Post*, p. 1294.
Forbearance will not discharge, see section 1282.
Liability of guarantor, see sections 1271 et seq. *Ante*, p. 1292.
Neglect or refusal to sue after request will discharge, see section 1293. *Post*, p. 1295.
Rights of creditor where security given, see section 1299. *Post*, p. 1296.

Void promises.

SEC. 1279. VOID PROMISES.—A promise by a creditor, which for any cause is void, or voidable by him at his option, does not alter the obligation or suspend or impair the remedy, within the meaning of section 1278.

Rescission of alteration.

SEC. 1280. RESCISSION OF ALTERATION.—The rescission of an agreement altering the original obligation of a debtor, or impairing the remedy of a creditor, does not restore the liability of a guarantor who has been exonerated by such agreement.

Part performance.

SEC. 1281. PART PERFORMANCE.—The acceptance, by a creditor, of anything in partial satisfaction of an obligation, reduces the obligation of a guarantor thereof, in the same measure as that of the principal, but does not otherwise affect it.

CROSS REFERENCES

Acceptance of consideration of accord, see section 480. *Ante*, p. 1189.
Acceptance of part performance in satisfaction of obligation, see section 481. *Ante*, p. 1189.
Effect of part performance, see sections 450, 454, and 481. *Ante*, pp. 1185, 1186, 1189.

Delay does not discharge guarantor.

SEC. 1282. DELAY OF CREDITOR DOES NOT DISCHARGE GUARANTOR.—Mere delay on the part of a creditor to proceed against the principal, or to enforce any other remedy, does not exonerate a guarantor.

CROSS REFERENCE

Notice to creditor to sue, see section 1293. *Post*, p. 1295.

Indemnified guarantors.

SEC. 1283. GUARANTOR INDEMNIFIED BY THE DEBTOR, NOT EXONERATED.—A guarantor who has been indemnified by the principal is liable to the creditor to the extent of the indemnity, notwithstanding that the creditor, without the assent of the guarantor, may have modified the contract or released the principal.

CROSS REFERENCE

Ante, pp. 1291, 1293. See sections 1278 and 1265 (1).

Discharge of principal by act of law.

SEC. 1284. DISCHARGE OF PRINCIPAL BY ACT OF LAW DOES NOT DISCHARGE GUARANTOR.—A guarantor is not exonerated by the discharge of his principal by operation of law, without the intervention or omission of the creditor.

SURETYSHIP.

CHAPTER 61.—SURETYSHIP

WHO ARE SURETIES

Definition.

SEC. 1285. SURETY, WHAT.—A surety is one who at the request of another, and for the purpose of securing to him a benefit, becomes responsible for the performance by the latter of some act in favor of a third person, or hypothecates property as security therefor.

CROSS REFERENCES

Ante, p. 1291. Guaranty, see sections 1261 et seq.

Ante, p. 1290. Indemnity, see sections 1251–a et seq.

Apparent principal may show suretyship.

SEC. 1286. APPARENT PRINCIPAL MAY SHOW THAT HE IS SURETY.—One who appears to be a principal, whether by the terms of a written instrument or otherwise, may show that he is in fact a surety, except as against persons who have acted on the faith of his apparent character of principal.

Liability of sureties.

LIABILITY OF SURETIES

Limit of.

SEC. 1287. LIMIT OF SURETY'S OBLIGATION.—A surety can not be held beyond the express terms of his contract, and if such contract prescribes a penalty for its breach, he can not in any case be liable for more than the penalty.

CROSS REFERENCE

Ante, p. 1292. Liability of guarantors, see sections 1272 and 1273.

Rules of interpretation.

SEC. 1288. RULES OF INTERPRETATION.—In interpreting the terms of a contract of suretyship, the same rules are to be observed as in the case of other contracts.

Judgment against surety does not alter the relation.

SEC. 1289. JUDGMENT AGAINST SURETY DOES NOT ALTER THE RELATION.—Notwithstanding the recovery of judgment by a creditor against a surety, the latter still occupies the relation of surety.

Exoneration by performance or offer of.

SEC. 1290. SURETY EXONERATED BY PERFORMANCE OR OFFER OF PERFORMANCE.—Performance of the principal obligation, or an offer of such performance, duly made as provided in this code, exonerates a surety.

CROSS REFERENCE

Ante, p. 1186. Offer of performance, see sections 453 to 473.

Sureties discharged by acts of creditor.

SEC. 1291. SURETY DISCHARGED BY CERTAIN ACTS OF THE CREDITOR.—A surety is exonerated—

1. In like manner with a guarantor;

2. To the extent to which he is prejudiced by any act of the creditor which would naturally prove injurious to the remedies of

the surety or inconsistent with his rights, or which lessens his security; or

3. To the extent to which he is prejudiced by an omission of the creditor to do anything, when required by the surety, which it is his duty to do.

CROSS REFERENCES

Exoneration of guarantor, see sections 1278 et seq. *Ante*, p. 1293.
Omission of creditor to proceed against principal, see section 1293.

RIGHTS OF SURETIES

Rights of sureties.

SEC. 1292. SURETY HAS RIGHTS OF GUARANTOR.—A surety has all the rights of a guarantor, whether he become personally responsible or not. Has rights of guarantor.

SEC. 1293. SURETY MAY REQUIRE THE CREDITOR TO PROCEED AGAINST THE PRINCIPAL.—A surety may require his creditor to proceed against the principal, or to pursue any other remedy in his power which the surety can not himself pursue, and which would lighten his burden; and if in such case the creditor neglects to do so, the surety is exonerated to the extent to which he is thereby prejudiced. May require creditor to proceed against principal.

CROSS REFERENCE

Mere delay by creditor to pursue principal does not discharge surety, see sections 1282 and 1291 (1). *Ante*, pp. 1293, 1294.

SEC. 1294. SURETY MAY COMPEL PRINCIPAL TO PERFORM OBLIGATIONS, WHEN DUE.—A surety may compel his principal to perform the obligation when due. May compel principal to perform obligations.

CROSS REFERENCE

Substitute for equitable action, see section 1293.

SEC. 1295. A PRINCIPAL BOUND TO REIMBURSE HIS SURETY.—If a surety satisfies the principal obligation, or any part thereof, whether with or without legal proceedings, the principal is bound to reimburse what he has disbursed, including necessary costs and expenses; but the surety has no claim for reimbursement against other persons, though they may have been benefited by his act, except as prescribed by section 1296. Exoneration.

SEC. 1296. THE SURETY ACQUIRES THE RIGHT OF THE CREDITOR.—A surety, upon satisfying the obligation of the principal, is entitled to enforce every remedy which the creditor then has against the principal to the extent of reimbursing what he has expended, and also to require all his cosureties to contribute thereto, without regard to the order of time in which they became such. Subrogation.

SEC. 1297. SURETY ENTITLED TO BENEFIT OF SECURITIES HELD BY CRDITOR.[1]—A surety is entitled to the benefit of every security for the performance of the principal obligation held by the creditor, or by a cosurety at the time of entering into the contract of suretyship, or acquired by him afterwards, whether the surety was aware of the security or not. Surety entitled to securities held by creditor.

SEC. 1298. THE PROPERTY OF PRINCIPAL TO BE TAKEN FIRST.—Whenever property of a surety is hypothecated with property of the principal, the surety is entitled to have the property of the principal first applied to the discharge of the obligation. Property of principal to be taken first.

[1] So in original.

Rights of creditors.

RIGHTS OF CREDITORS

Creditor entitled to benefit of securities held by surety.

SEC. 1299. CREDITOR ENTITLED TO BENEFIT OF SECURITIES HELD BY SURETY.—A creditor is entitled to the benefit of everything which a surety has received from the debtor by way of security for the performance of the obligation, and may, upon maturity of the obligation, compel the application of such security to its satisfaction.

Letter of credit.

LETTER OF CREDIT

Definition.

SEC. 1300. LETTER OF CREDIT, WHAT.—A letter of credit is a written instrument, addressed by one person to another, requesting the latter to give credit to the person in whose favor it is drawn.

How addressed.

SEC. 1301. HOW ADDRESSED.—A letter of credit may be addressed to several persons in succession.

Liability of writer.

SEC. 1302. LIABILITY OF THE WRITER.—The writer of a letter of credit is, upon the default of the debtor, liable to those who gave credit in compliance with its terms.

CROSS REFERENCE

When notice to the writer necessary, see section 1307.

Letters of credit, general or special.

SEC. 1303. LETTERS OF CREDIT EITHER GENERAL OR SPECIAL.—A letter of credit is either general or special. When the request for credit in a letter is addressed to specified persons by name or description, the letter is special. All other letters of credit are general.

CROSS REFERENCE

Credit to correspond with terms of letter, see section 1308.

Nature of general letter.

SEC. 1304. NATURE OF GENERAL LETTER OF CREDIT.—A general letter of credit gives any person to whom it may be shown authority to comply with its request, and by his so doing it becomes, as to him, of the same effect as if addressed to him by name.

Extent of.

SEC. 1305. EXTENT OF GENERAL LETTER OF CREDIT.—Several persons may successively give credit upon a general letter.

Letter of credit as continuing guaranty.

SEC. 1306. A LETTER OF CREDIT MAY BE A CONTINUING GUARANTY.—If the parties to a letter of credit appear, by its terms, to contemplate a course of future dealing between the parties, it is not exhausted by giving a credit, even to the amount limited by the letter, which is subsequently reduced or satisfied by payments made by the debtor, but is to be deemed a continuing guaranty.

Notice to writer.

SEC. 1307. WHEN NOTICE TO THE WRITER NECESSARY.—The writer of a letter of credit is liable for credit given upon it without notice to him, unless its terms express or imply the necessity of giving notice.

Credit given must agree with terms of letter.

SEC. 1308. THE CREDIT GIVEN MUST AGREE WITH THE TERMS OF THE LETTER.—If a letter of credit prescribes the persons by whom, or the mode in which, the credit is to be given, or the term of credit, or limits the amount thereof, the writer is not bound except for transactions which, in these respects, conform strictly to the terms of the letter.

LIENS IN GENERAL.

CHAPTER 62.—LIENS IN GENERAL

DEFINITION OF LIENS

Definition.

SEC. 1309. LIEN, WHAT.—A lien is a charge imposed in some mode other than by a transfer in trust upon specific property by which it is made security for the performance of an act.

General or special.

SEC. 1310. LIENS, GENERAL OR SPECIAL.—Liens are either general or special.

SEC. 1311. GENERAL LIEN, WHAT.—A general lien is one which the holder thereof is entitled to enforce as a security for the performance of all the obligations, or all of a particular class of obligations, which exist in his favor against the owner of the property. General lien.

CROSS REFERENCES

Banker, see section 1397. *Post*, p. 1307.
Factors, lien, see section 1396. *Post*, p. 1307.
Lien for services, see section 1393. *Post*, p. 1306.

SEC. 1312. SPECIAL LIEN, WHAT.—A special lien is one which the holder thereof can enforce only as security for the performance of a particular act or obligation, and of such obligations as may be incidental thereto. Special lien.

CROSS REFERENCES

Mortgage is a special lien unless otherwise agreed, see section 1336. *Post*, p. 1300.
Rights where prior lien discharged, see section 1313.
Special lien of officer levying attachment on execution, see section 1398. *Post*, p. 1307.
Special lien on personalty for services, see section 1393. *Post*, p. 1306.
Special lien of seller of personalty, see sections 649 et seq. *Ante*, p. 1215.

SEC. 1313. PRIOR LIENS.—Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists. Prior liens.

SEC. 1314. CONTRACTS SUBJECT TO PROVISIONS OF THIS CHAPTER.—Contracts of mortgage and pledge are subject to all the provisions of this chapter. Mortgages and pledges subject to provisions herein.

CREATION OF LIENS Creation of liens.

SEC. 1315. LIEN, HOW CREATED.—A lien is created: How created.

1. By contract of the parties; or
2. By operation of law.

SEC. 1316. NO LIEN FOR CLAIM NOT DUE.—No lien arises by mere operation of law until the time at which the act to be secured thereby ought to be performed. No lien for claim not due.

SEC. 1317. LIEN ON FUTURE INTEREST.—An agreement may be made to create a lien upon property not yet acquired by the party agreeing to give the lien, or not yet in existence. In such case the lien agreed for attaches from the time when the party agreeing to give it acquires an interest in the thing, to the extent of such interest. Lien on future interest.

SEC. 1318. LIEN MAY BE CREATED BY CONTRACT.—A lien may be created by contract, to take immediate effect, as security for the performance of obligations not then in existence. Creation by contract.

EFFECT OF LIENS Effect of.

SEC. 1319. LIEN, OR CONTRACT FOR LIEN, TRANSFERS NO TITLE.—Notwithstanding an agreement to the contrary, a lien, or a contract for a lien, transfers no title to the property subject to the lien. No title transferred.

CROSS REFERENCE

Mortgage gives no right to possession, see section 1340. *Post*, p. 1300.

SEC. 1320. CERTAIN CONTRACTS VOID.—All contracts for the forfeiture of property subject to a lien, in satisfaction of the obligation secured thereby, and all contracts in restraint of the right of redemption from a lien, are void. Certain contracts void.

Creation does not imply personal obligation.

SEC. 1321. CREATION OF LIEN DOES NOT IMPLY PERSONAL OBLIGATION.—The creation of a lien does not of itself imply that any person is bound to perform the act for which the lien is a security.

CROSS REFERENCE

Post, pp. 1299, 1300, 1305.

See, also, sections 1329, 1341, and 1381.

Extent of.

SEC. 1322. EXTENT OF LIEN.—The existence of a lien upon property does not of itself entitle the person in whose favor it exists to a lien upon the same property for the performance of any other obligation than that which the lien originally secured.

Holder not entitled to compensation.

SEC. 1323. HOLDER OF LIEN NOT ENTITLED TO COMPENSATION.—One who holds property by virtue of a lien thereon is not entitled to compensation from the owner thereof for any trouble or expense which he incurs respecting it, except to the same extent as a borrower, under sections 805 and 806.

Ante, p. 1242.

PRIORITY OF LIENS

Priority of liens.

SEC. 1324. PRIORITY OF LIENS.—Other things being equal, different liens upon the same property have priority according to the time of their creation, except in cases of bottomry and respondentia.

Order of resort to different funds.

SEC. 1325. ORDER OF RESORT TO DIFFERENT FUNDS.—Where one has a lien upon several things, and other persons have subordinate liens upon, or interests in, some but not all of the same things, the person having the prior lien, if he can do so without risk of loss to himself or of injustice to other persons, must resort to the property in the following order, on the demand of any party interested:

1. To the things upon which he has an exclusive lien;

2. To the things which are subject to the fewest subordinate liens;

3. In like manner inversely to the number of subordinate liens upon the same things; and

4. When several things are within one of the foregoing classes, and subject to the same number of liens, resort must be had—

(1) To the things which have not been transferred since the prior lien was created;

(2) To the things which have been so transferred without a valuable consideration; and

(3) To the things which have been so transferred for a valuable consideration in the inverse order of the transfer.

CROSS REFERENCE

Post, p. 1338.

Marshaling of assets, see section 1658.

Redemption from liens.

REDEMPTION FROM LIENS

Right to redeem; subrogation.

SEC. 1326. RIGHT TO REDEEM; SUBROGATION.—Every person, having an interest in property subject to a lien, has the right to redeem it from the lien at any time after the claim is due and before his right of redemption is foreclosed, and, by such redemption, becomes subrogated to all the benefits of the lien, as against all owners of other interests in the property, except in so far as he was bound to make such redemption for their benefit.

CROSS REFERENCE

Post, p. 1306.

Pledgor's right of redemption may be foreclosed, see section 1392.

Rights of inferior lienor.

SEC. 1327. RIGHTS OF INFERIOR LIENOR.—One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests, upon satisfying the claim secured thereby.

Redemption from lien, how made.

SEC. 1328. REDEMPTION FROM LIEN, HOW MADE.—Redemption from a lien is made by performing, or offering to perform, the act for the performance of which it is a security, and paying, or offering to pay, the damages, if any, to which the holder of the lien is entitled for delay.

CROSS REFERENCE

Offer to perform, see section 453. *Ante*, p. 1186.

Extinction of liens.

EXTINCTION OF LIENS

Lien deemed accessory to the act whose performance it secures.

SEC. 1329. LIEN DEEMED ACCESSORY TO THE ACT WHOSE PERFORMANCE IT SECURES.—A lien is to be deemed accessory to the act for the performance of which it is a security, whether any person is bound for such performance or not, and is extinguishable in like manner with any other accessory obligation.

CROSS REFERENCE

Assignment of debt, see section 1348. *Post*, p. 1301.

Extinction by sale or conversion.

SEC. 1330. EXTINCTION BY SALE OR CONVERSION.—The sale of any property on which there is a lien, in satisfaction of the claim secured thereby or in case of personal property, its wrongful conversion by the person holding the lien, extinguishes the lien thereon.

CROSS REFERENCE

Sale of property by lien holder, see section 1395. *Post*, p. 1307.

By lapse of time.

SEC. 1331. LIEN EXTINGUISHED BY LAPSE OF TIME UNDER STATUTE OF LIMITATIONS.—A lien is extinguished by the lapse of the time within which, under the provisions of the Code of Civil Procedure, an action can be brought upon the principal obligation.

Apportionment of lien.

SEC. 1332. APPORTIONMENT OF LIEN.—The partial performance of an act secured by a lien does not extinguish the lien upon any part of the property subject thereto, even if it is divisible.

Restoration extinguishes lien.

SEC. 1333. WHEN RESTORATION EXTINGUISHES LIEN.—The voluntary restoration of property to its owner by the holder of a lien thereon dependent upon possession extinguishes the lien as to such property, unless otherwise agreed by the parties, and extinguishes it, notwithstanding any such agreement, as to creditors of the owner and persons subsequently acquiring a title to the property, or a lien thereon, in good faith, and for value.

CROSS REFERENCE

Lien dependent on possession, see section 1393. *Post*, p. 1306.

CHAPTER 63.—MORTGAGE

MORTGAGE.

In general.

MORTGAGES IN GENERAL

Definition.

SEC. 1334. MORTGAGE, WHAT.—Mortgage is a contract by which specific property is hypothecated for the performance of an act, without the necessity of a change of possession.

CROSS REFERENCE

Actual transfer of possession of personalty would change it into a pledge, see section 1337.

To be in writing.

SEC. 1335. TO BE IN WRITING.—A mortgage can be created, renewed, or extended, only by writing, subscribed by the party to be charged or by his agent thereunto authorized in writing.

Lien of, when special.

SEC. 1336. LIEN OF A MORTGAGE, WHEN SPECIAL.—The lien of a mortgage is special, unless otherwise expressly agreed, and is independent of possession.

CROSS REFERENCE

Ante, p. 1297. Special lien, definition, see section 1312.

Transfer, when mortgage, when pledge.

SEC. 1337. TRANSFER, WHEN MORTGAGE, WHEN PLEDGED.—Every transfer of an interest in property, other than in trust, made only as a security for the performance of another act, is to be deemed a mortgage, except when it is accompanied by actual change of possession, in which case it is to be deemed a pledge.

CROSS REFERENCE

Deed absolute on its face, when a mortgage, see section 1338.

Transfer made subject to defeasance, may be proved.

SEC. 1338. TRANSFER MADE SUBJECT TO DEFEASANCE MAY BE PROVED.—The fact that a transfer was made subject to defeasance on a condition, may, for the purpose of showing such transfer to be a mortgage, be proved (except as against a subsequent purchaser or encumbrancer for value and without notice), though the fact does not appear by the terms of the instrument.

CROSS REFERENCE

Transfer, when mortgage, when pledge, see section 1337.

Mortgage as lien.

SEC. 1339. MORTGAGE, ON WHAT A LIEN.—A mortgage is a lien upon everything that would pass by a grant of the property.

CROSS REFERENCES

Ante, p. 1152. Fixtures, generally, see section 188.

Post, p. 1303. Growing crops, see section 1365.

Right to possession.

SEC. 1340. MORTGAGE DOES NOT ENTITLE MORTGAGEE TO POSSESSION.—A mortgage does not entitle the mortgagee to the possession of the property, unless authorized by the express terms of the mortgage; but after the execution of the mortgage the mortgagor may agree to such change of possession without a new consideration.

CROSS REFERENCE

Ante, p. 1299. Mortgagee's possession, see sections 1334 and 1336.

Mortgage not a personal obligation.

SEC. 1341. MORTGAGE NOT A PERSONAL OBLIGATION.—A mortgage does not bind the mortgagor personally to perform the act for the performance of which it is a security, unless there is an express covenant therein to that effect.

Waste.

SEC. 1342. WASTE.—No person whose interest is subject to the lien of a mortgage may do any act which will substantially impair the mortgagee's security.

Subsequently acquired title inures to mortgagee.

SEC. 1343. SUBSEQUENTLY ACQUIRED TITLE INURES TO MORTGAGEE.—Title acquired by the mortgagor subsequent to the execution of the mortgage, inures to the mortgagee as security for the debt in like manner as if acquired before the execution.

Power of sale.

SEC. 1344. POWER OF SALE.—A power of sale may be conferred by a mortgage upon the mortgagee or any other person, to be exercised after a breach of the obligation for which the mortgage is a security.

Power of attorney to execute.

SEC. 1345. POWER OF ATTORNEY TO EXECUTE.—A power of attorney to execute a mortgage must be in writing, subscribed, acknowledged, or proved, and certified in the manner prescribed in chapter 22 of this code, and recorded in the office of the registrar of property.

Ante, p. 1164.

CROSS REFERENCE

Authorization, generally, see section 1046. *Ante*, p. 1265.

Mortgage, when void as to third person.

SEC. 1345a. MORTGAGE, WHEN VOID AS TO THIRD PERSONS.—A mortgage of property is void as against creditors of the mortgagor and subsequent purchasers and encumbrances of the property in good faith for value, unless it is acknowledged or proved and certified in the manner prescribed in chapter 22 of this code, and recorded in the office of the Registrar of Property of the Canal Zone.

Ante, p. 1164.

Recording assignment of mortgage.

SEC. 1346. RECORDING ASSIGNMENT OF MORTGAGE.—An assignment of a mortgage may be recorded in like manner as a mortgage, and such record operates as notice to all persons subsequently deriving title to the mortgage from the assignor.

Recording assignment, not notice to mortgagor.

SEC. 1347. RECORDING ASSIGNMENT OF MORTGAGE NOT NOTICE TO MORTGAGOR.—When the mortgage is executed as security for money due, or to become due, on a promissory note, bond, or other instrument designated in the mortgage, the record of the asssignment of the mortgage is not, of itself, notice to a mortgagor, his heirs, or personal representatives, so as to invalidate any payment made by them, or either of them, to the person holding such note, bond, or other instrument.

Mortgage passes by assignment of debt.

SEC. 1348. MORTGAGE PASSES BY ASSIGNMENT OF DEBT.—The assignment of a debt secured by mortgage carries with it the security.

How mortgage discharged.

SEC. 1349. MORTGAGE, HOW DISCHARGED.—A recorded mortgage may be discharged by an entry in the margin of the record thereof, signed by the mortgagee, or his personal representative or assignee, acknowledging the satisfaction of the mortgage in the presence of the registrar of property, who must certify the acknowledgment in form substantially as follows: "Signed and acknowledged before me, this ——— day of ———, in the year ———. A. B., Registrar of Property."

SEC. 1350. SAME.—A recorded mortgage, if not discharged as provided in section 1349, must be discharged upon the record by the officer having custody thereof, on the presentation to him of a certificate signed by the mortgagee, his personal representatives or assigns, acknowledged or proved and certified as prescribed by chapter 22 of this code, stating that the mortgage has been paid, satisfied, or discharged.

Duty of mortgagee on satisfaction.

SEC. 1351. DUTY OF MORTGAGEE ON SATISFACTION OF MORTGAGE.—When any mortgage has been satisfied, the mortgagee or his assignee must immediately, on the demand of the mortgagor, execute, acknowledge, and deliver to him a certificate of the discharge thereof, so as to entitle it to be recorded, or he must enter satisfaction, or cause satisfaction of such mortgage to be entered of record; and any mortgagee, or assignee of such mortgagee, who refuses to execute, acknowledge, and deliver to the mortgagor the certificate of discharge, or to enter satisfaction, or cause satisfaction of the mortgage to be entered, as provided in this chapter, is liable to the mortgagor, or his grantee or heirs, for all damages which he or they may sustain by reason of such refusal, and shall also forfeit to him or them the sum of one hundred dollars.

Contracts of bottomry or respondentia not affected.

SEC. 1352. PROVISIONS OF THIS CHAPTER DO NOT AFFECT BOTTOMRY OR RESPONDENTIA.—Contracts of bottomry or respondentia, although in the nature of mortgages, are not affected by any of the provisions of this chapter.

Mortgages of personal property.

MORTGAGES OF PERSONAL PROPERTY

What may be mortgaged.

SEC. 1353.—WHAT PERSONAL PROPERTY MAY BE MORTGAGED.—Mortgages may be made upon all growing crops, including fruit, and upon any and all kinds of personal property, except articles of wearing apparel and personal adornment.

CROSS REFERENCE

Post, p. 1303.

As to the validity of mortgages on excepted property, see section 1366.

Mortgage of stock in trade.

SEC. 1354. MORTGAGE OF STOCK IN TRADE OF MERCHANT.—Where a mortgage is made upon the stock in trade of a merchant, it shall be deemed, in the absence of a contrary intention, to cover goods subsequently acquired; and purchasers from the mortgagor in good faith and in the usual course of business shall not be liable to the mortgagee.

Form of personal mortgage.

SEC. 1355. FORM OF PERSONAL MORTGAGE.—A mortgage of personal property may be made in substantially the following form:

This mortgage, made the —— day of ——, in the year ——, by A B, of ——, by occupation a ——, mortgagor, to C D, of ——, by occupation a ——, mortgagee, witnesseth:

That the mortgagor mortgages to the mortgagee (here describe the property), as security for the payment to him of —— dollars, on (or before) the —— day of ——, in the year ——, with interest thereon (or, as security for the payment of a note or obligation, describing it, and so forth) A B.

When void as to third persons.

SEC. 1356. WHEN VOID AS TO THIRD PERSONS.—A mortgage of personal property is void as against creditors of the mortgagor and subsequent purchasers and encumbrancers of the property in good faith and for value, unless:

1. It is accompanied by the affidavit of all the parties thereto that it is made in good faith and without any design to hinder, delay, or defraud creditors;

2. It is acknowledged or proved and certified in the manner prescribed in chapter 22 of this code, and recorded in the office of the registrar of property of the Canal Zone.

Ante, p. 1164.

Recording books for.

SEC. 1357. BOOKS TO BE KEPT FOR PERSONAL MORTGAGES.—Mortgages of personal property must be recorded in books kept for personal mortgages exclusively.

CROSS REFERENCE

Manner of acknowledging, proving, certifying, and recording, see section 1356.

Removing mortgaged property from Zone.

SEC. 1359. REMOVING MORTGAGED PROPERTY FROM ZONE.—No mortgagor shall remove or permit the removal of mortgaged property from the Canal Zone without the written consent of the mortgagee.

How foreclosed.

SEC. 1360. HOW FORECLOSED.—A mortgagee of personal property, when the debt to secure which the mortgage was executed becomes due, may foreclose the mortgagor's right of redemption by a sale of the property, made in the manner and upon the notice prescribed by chapter 64 of this code on "pledge," or by proceedings under the Code of Civil Procedure.

Post, p. 1305.

CROSS REFERENCES

Post, p. 1305. Actual notice required, see section 1383.

Post, p. 1305. Sale of pledge, see sections 1381 et seq.

Mortgaged property may be levied upon.

SEC. 1361. MORTGAGED PROPERTY MAY BE LEVIED UPON.—Personal property mortgaged may be taken under attachment or execution issued at the suit of a creditor of the mortgagor.

Attachment and executions on.

SEC. 1362. ATTACHMENT AND EXECUTIONS ON MORTGAGED PERSONAL PROPERTY.—Before the property is so taken the officer must pay or tender to the mortgagee the amount of the mortgage debt and interest or must deposit the amount thereof with the registrar of property, payable to the order of the mortgagee: *Provided, however*, That when an attachment or execution creditor presents to the officer a verified statement that the mortgage is void or invalid for reasons therein specified and delivers to the officer a good and sufficient indemnity bond in double the amount of the mortgage debt or double the value of the mortgaged property, as the officer may determine and require, the officer shall take the property, and, in the case of an execution, sell it in the manner provided by law.

Proviso.
When mortgage void, etc., indemnity bond.

The bond shall be made to both the officer and the mortgagee and shall indemnify them and each of them for the taking of the property against loss, liability, damages, costs, and counsel fees.

CROSS REFERENCE

Measure of special owner's damage for conversion, see section 1618. *Post*, p. 1333.

Application of proceeds.

SEC. 1363. APPLICATION OF PROCEEDS OF SALE.—When the property is taken after payment or tender of deposit as provided for in section 1362, and is sold under process the officer must apply the proceeds of the sale as follows:

1. To the repayment of the sum paid to the mortgagee, with interest from the date of such payment; and

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

When the property is taken after presentation to the officer of the verified statement and bond mentioned in the proviso in section 1362 and is sold under process the officer must apply the proceeds of the sale as follows:

1. To the satisfaction of the amount specified in the process including interest and costs; and

2. The balance, if any, in like manner as the proceeds of sales under execution are applied in other cases.

Designated sections not applicable to mortgage of certain ships. *Ante*, p. 1302.

SEC. 1364. CERTAIN SECTIONS NOT APPLICABLE TO MORTGAGE OF CERTAIN SHIPS.—Sections 1356 and 1357 to 1359 do not apply to any mortgage of a ship or part of a ship under the flag of the United States.

Continuance of lien of mortgage on crops.

SEC. 1365. CONTINUANCE OF LIEN OF MORTGAGE ON CROPS.—The lien of a mortgage on a growing crop continues on the crop after severance, whether remaining in its original state or converted into another product, so long as the same remains on the land of mortgagor.

Validity of certain mortgages.

SEC. 1366. VALIDITY OF CERTAIN MORTGAGES.—Mortgages of personal property, other than that mentioned in section 1353, and mortgages not made in conformity with the provisions of this subchapter, are nevertheless valid between the parties, their heirs, legatees, and personal representatives, and persons who, before parting with value, have actual notice thereof.

CHAPTER 64.—PLEDGE

PLEDGE.

Defined.

SEC. 1367. PLEDGE, WHAT.—Pledge is a deposit of personal property by way of security for the performance of another act.

CROSS REFERENCE

Increase of property pledged, see section 1370.

When contract deemed a pledge.

SEC. 1368. WHEN CONTRACT IS TO BE DEEMED A PLEDGE.—Every contract by which the possession of personal property is transferred, as security only, is to be deemed a pledge.

Delivery essential.

SEC. 1369. DELIVERY ESSENTIAL TO VALIDITY OF PLEDGE.—The lien of a pledge is dependent on possession, and no pledge is valid until the property pledged is delivered to the pledgee, or to a pledge holder, as hereinafter prescribed.

Increase of property.

SEC. 1370. INCREASE OF THING.—The increase of property pledged is pledged with the property.

Lienor may pledge property to extent of lien.

SEC. 1371. LIENOR MAY PLEDGE PROPERTY TO EXTENT OF HIS LIEN.—One who has a lien upon property may pledge it to the extent of his lien.

CROSS REFERENCES

Compare section 1372.

Post, p. 1333. Lienor's action for damages, see section 1618.

Real owner can not defeat pledge of property transferred to apparent owner.

SEC. 1372. REAL OWNER CAN NOT DEFEAT PLEDGE OF PROPERTY TRANSFERRED TO APPARENT OWNER FOR THE PURPOSE OF PLEDGE.—One who has allowed another to assume the apparent ownership of property for the purpose of making any transfer of it, can not set up his own title, to defeat a pledge of the property, made by the other, to a pledgee who received the property in good faith, in the ordinary course of business, and for value.

Pledge lender.

SEC. 1373. PLEDGE LENDER, WHAT.—Property may be pledged as security for the obligation of another person than the owner, and in so doing the owner has all the rights of a pledgor for himself, except as hereinafter stated.

Pledge holder.

SEC. 1374. PLEDGE HOLDER, WHAT.—A pledgor and pledgee may agree upon a third person with whom to deposit the property pledged, who, if he accepts the deposit, is called a pledge holder.

When pledge lender may withdraw property.

SEC. 1375. WHEN PLEDGE LENDER MAY WITHDRAW PROPERTY PLEDGED.—One who pledges property as security for the obligation of another can not withdraw the property pledged otherwise than as a pledgor for himself might, and if he receives from the debtor a consideration for the pledge he can not withdraw it without his consent.

Obligations of pledge holder.

SEC. 1376. OBLIGATIONS OF PLEDGE HOLDER.—A pledge holder for reward can not exonerate himself from his undertaking; and a gratuitous pledge holder can do so only by giving reasonable notice to the pledgor and pledgee to appoint a new pledge holder, and in case of their failure to agree, by depositing the property pledged with some impartial person, who will then be entitled to a reasonable compensation for his care of the same.

Pledge holder must enforce rights of pledgee.

SEC. 1377. PLEDGE HOLDER MUST ENFORCE RIGHTS OF PLEDGEE.—A pledge holder must enforce all the rights of the pledgee, unless authorized by him to waive them.

Obligation of pledgees, etc., for reward.

SEC. 1378. OBLIGATION OF PLEDGEE AND PLEDGE HOLDER, FOR REWARD.—A pledgee, or a pledge holder for reward, assumes the duties and liabilities of a depositary for reward.

CROSS REFERENCE

Ante, p. 1229. Depositary for reward, see section 725.

Gratuitous pledge holder.

SEC. 1379. GRATUITOUS PLEDGE HOLDER.—A gratuitous pledge holder assumes the duties and liabilities of a gratuitous depositary.

CROSS REFERENCE

Gratuitous pledge holder, see sections 722 and 723. *Ante*, p. 1229.

Debtor's misrepresentation of value.

SEC. 1380. DEBTOR'S MISREPRESENTATION OF VALUE OF PLEDGE.—Where a debtor has obtained credit, or an extension of time, by a fraudulent misrepresentation of the value of property pledged by or for him, the creditor may demand a further pledge to correspond with the value represented; and in default thereof may recover his debt immediately, though it be not actually due.

Pledgee may sell.

SEC. 1381. WHEN PLEDGEE MAY SELL.—When performance of the act for which a pledge is given is due, in whole or in part, the pledgee may collect what is due to him by a sale of property pledged, subject to the rules and exceptions hereinafter prescribed.

CROSS REFERENCE

Foreclosure of right of redemption, see section 1392. *Post*, p. 1306.

Sale.

SEC. 1382. SALE OF PLEDGED PROPERTY.—Before property pledged can be sold, and after performance of the act for which it is security is due, the pledgee must demand performance thereof from the debtor, if the debtor can be found.

CROSS REFERENCE

Waiver of demand of performance before sale, see section 1385.

Notice of.

SEC. 1383. NOTICE OF SALE TO PLEDGOR.—A pledgee must give actual notice to the pledgor of the time and place at which the property pledged will be sold, at such a reasonable time before the sale as will enable the pledgor to attend.

Waiver of.

SEC. 1384. WAIVER OF NOTICE OF SALE.—Notice of sale may be waived by a pledgor at any time; but is not waived by a mere waiver of demand of performance.

Waiver of demand.

SEC. 1385. WAIVER OF DEMAND.—A debtor or pledgor waives a demand of performance as a condition precedent to a sale of the property pledged, by a positive refusal to perform, after performance is due; but can not waive it in any other manner except by contract.

Sale by public auction.

SEC. 1386. SALE OF PLEDGED PROPERTY, MANNER OF.—The sale by pledgee, of property pledged, must be made by public auction, in the manner and upon the notice of sale of personal property under execution.

Pledgee's sale of securities.

SEC. 1387. PLEDGEE'S SALE OF SECURITIES.—A pledgee can not sell any evidence of debt pledged to him, except the obligations of governments, States, or corporations; but he may collect the same when due.

CROSS REFERENCE

Right of redemption, see section 1326. *Ante*, p. 1298.

Sale on demand of pledgor.

SEC. 1388. SALE ON THE DEMAND OF THE PLEDGOR.—Whenever property pledged can be sold for a price sufficient to satisfy the claim of the pledgee, the pledgor may require it to be sold, and its proceeds to be applied to such satisfaction, when due.

CROSS REFERENCE

Retaining proceeds, see section 1390. *Post*, p. 1306.

Surplus to be paid pledgor.

SEC. 1389. SURPLUS TO BE PAID TO PLEDGOR.—After a pledgee has lawfully sold property pledged, or otherwise collected its proceeds, he may deduct therefrom the amount due under the principal obli-

gation, and the necessary expenses of sale and collection, and must pay the surplus to the pledgor, on demand.

Pledgee may retain all that can become due.

SEC. 1390. PLEDGEE MAY RETAIN ALL THAT CAN BECOME DUE.—When property pledged is sold by order of the pledgor before the claim of the pledgee is due, the latter may retain out of the proceeds all that can possibly become due under his claim until it becomes due.

Right to purchase at sale.

Ante, p. 1305.

SEC. 1391. PLEDGEE OR PLEDGE HOLDER MAY PURCHASE.—Whenever property pledged is sold at public auction, in the manner provided by section 1386, the pledgee or pledge holder may purchase said property at such sale.

Pledgee may foreclose right of redemption.

SEC. 1392. PLEDGEE MAY FORECLOSE RIGHT OF REDEMPTION.—Instead of selling property pledged, as hereinbefore provided, a pledgee may foreclose the right of redemption by a judicial sale, under the direction of a competent court; and in that case may be authorized by the court to purchase at the sale.

OTHER LIENS.

CHAPTER 65.—OTHER LIENS

CROSS REFERENCE

Ante, p. 1215.

Lien of seller of goods, see sections 649 et seq.

Lien on personal property for services.

SEC. 1393. LIEN ON PERSONAL PROPERTY FOR SERVICES THEREON.—Every person who, while lawfully in possession of an article of personal property, renders any service to the owner thereof, by labor or skill, employed for the protection, improvement, safe-keeping, or carriage thereof, has a special lien thereon, dependent on possession, for the compensation, if any, which is due to him from the owner for such service; a person who makes, alters, or repairs any article of personal property, at the request of the owner, or legal possessor of the property, has a lien on the same for his reasonable charges for the balance due for such work done and materials furnished, and may retain possession of the same until the charges are paid; and livery or boarding or feed-stable proprietors, and persons pasturing horses or stock, have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, or pasturing such horses or stock; and laundry proprietors and persons conducting a laundry business, have a general lien, dependent on possession, upon all personal property in their hands belonging to a customer, for the balance due them from such customer for laundry work; and veterinary proprietors and veterinary surgeons shall have a lien, dependent on possession, for their compensation in caring for, boarding, feeding, and medical treatment of animals; and keepers of garages for automobiles shall have a lien, dependent on possession, for their compensation in caring for and safe-keeping such automobiles.

CROSS REFERENCES

Ante, p. 1255.

Carrier's lien, see section 954.

Ante, p. 1299.

Restoration of property extinguishes lien, see section 1333.

Limitation, where written notice not given.

SEC. 1394. LIMITATION ON AMOUNT RECOVERABLE WHERE WRITTEN NOTICE NOT GIVEN.—That portion of any lien, as provided for in section 1393, in excess of $100, for any work, services, care, or safe-keeping rendered or performed at the request of any person other than the holder of the legal title, shall be invalid, unless prior to commencing any such work, service, care, or safe-keeping, the person claiming such lien shall give actual notice in writing either by personal service or by registered letter addressed to the holder of the legal title to such property, if known. In the case of automobiles, the

person named as legal owner in the registration certificate, shall be deemed for the purpose of this section, as the holder of the legal title.

Lien holder may sell; notice; proceeds. *Ante*, p. 1306.

SEC. 1395. LIEN HOLDER MAY SELL PROPERTY; NOTICE OF SALE; PROCEEDS.—If the person entitled to the lien provided for in section 1393 be not paid the amount due and for which said lien is given, within twenty days after the same shall have become due, then such lien holder may proceed to sell said property, or so much thereof as may be necessary to satisfy said lien and costs of sale, at public auction, and by giving at least ten days' previous notice of such sale by advertising in some newspaper of general circulation in the Canal Zone. The proceeds of the sale must be applied to the discharge of the lien and the cost of keeping and selling the property; the remainder, if any, must be paid over to the owner thereof.

CROSS REFERENCE

Extinguishment of lien by sale or conversion, see section 1330. *Ante*, p. 1299.

Lien of factor.

SEC. 1396. LIEN OF FACTOR.—A factor has a general lien, dependent on possession, for all that is due to him as such, upon all articles of commercial value that are intrusted to him by the same principal.

CROSS REFERENCES

Factor's enforcement of lien, see section 880. *Ante*, p. 1251.
Power of pledging, see section 1372. *Ante*, p. 1304.

Banker's lien.

SEC. 1397. BANKER'S LIEN.—A banker has a general lien, dependent on possession, upon all property in his hands belonging to a customer, for the balance due to him from such customer in the course of the business.

Officer's lien.

SEC. 1398. OFFICER'S LIEN.—An officer who levies an attachment or execution upon personal property acquires a special lien, dependent on possession, upon such property, which authorizes him to hold it until the process is discharged or satisfied, or a judicial sale of the property is had.

CHAPTER 66.—NEGOTIABLE INSTRUMENTS IN GENERAL

NEGOTIABLE INSTRUMENTS IN GENERAL.

NOTE.—This chapter and chapters 67 to 69 of this code comprise the Uniform Negotiable Instruments Act. *Post*, pp. 1322–1329.

Form and interpretation.

FORM AND INTERPRETATION

Requirements.

SEC. 1400. REQUIREMENTS FOR NEGOTIABLE INSTRUMENT.—An instrument to be negotiable must conform to the following requirements:

(1) It must be in writing and signed by the maker or drawer;

(2) Must contain an unconditional promise or order to pay a sum certain in money;

(3) Must be payable on demand, or at a fixed or determinable future time;

(4) Must be payable to order or to bearer; and

(5) Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty.

Sum certain.

SEC. 1401. SUM PAYABLE CERTAIN.—The sum payable is a sum certain within the meaning of chapters 66 to 69 of this code, although it is to be paid—

(1) With interest; or

(2) By stated installments; or

(3) By stated installments, with a provision that upon default in payment of any installment or of interest, the whole shall become due; or

(4) With exchange, whether at a fixed rate or at the current rate; or

(5) With costs of collection or an attorney's fee, in case payment shall not be made at maturity.

Unconditional promise.

SEC. 1402. UNQUALIFIED PROMISE UNCONDITIONAL.—An unqualified order or promise to pay is unconditional within the meaning of chapters 66 to 69 of this code, though coupled with—

(1) An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

(2) A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional.

Time for payment.

SEC. 1403. TIME FOR PAYMENT.—An instrument is payable at a determinable, future time, within the meaning of chapters 66 to 69 of this code, which is expressed to be payable—

(1) At a fixed period after date or sight; or

(2) On or before a fixed or determinable future time specified therein; or

(3) On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect.

Nonnegotiable instrument.

SEC. 1404. NONNEGOTIABLE INSTRUMENT.—An instrument which contains an order or promise to do any act in addition to the payment of money is not negotiable. But the negotiable character of an instrument otherwise negotiable is not affected by a provision which—

Exceptions.

(1) Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

(2) Authorizes a confession of judgment, if the instrument be not paid at maturity; or

(3) Waives the benefit of any law intended for the advantage or protection of the obligor; or

(4) Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal.

Negotiability not affected.

SEC. 1405. NEGOTIABILITY NOT AFFECTED.—The validity and negotiable character of an instrument are not affected by the fact that—

(1) It is not dated; or

(2) Does not specify the value given, or that any value has been given therefor; or

(3) Does not specify the place where it is drawn or the place where it is payable; or

(4) Bears a seal; or

(5) Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring in certain cases the nature of the consideration to be stated in the instrument.

Payable on demand.

SEC. 1406. PAYABLE ON DEMAND.—An instrument is payable on demand—

(1) Where it is expressed to be payable on demand, or at sight, or on presentation; or

(2) In which no time for payment is expressed.

Where an instrument is issued, accepted, or indorsed when overdue, it is, as regards the person so issuing, accepting, or indorsing it, payable on demand.

Payable to order.

SEC. 1407. PAYABLE TO ORDER.—The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order. It may be drawn payable to the order of—

(1) A payee who is not maker, drawer, or drawee; or

(2) The drawer or maker; or

(3) The drawee; or

(4) Two or more payees jointly; or

(5) One or some of several payees; or

(6) The holder of an office for the time being.

Where the instrument is payable to order the payee must be named or otherwise indicated therein with reasonable certainty.

Payable to bearer.

SEC. 1408. PAYABLE TO BEARER.—The instrument is payable to bearer—

(1) When it is expressed to be so payable; or

(2) When it is payable to a person named therein or bearer; or

(3) When it is payable to the order of a fictitious or nonexisting person, and such fact was known to the person making it so payable; or

(4) When the name of the payee does not purport to be the name of any person; or

(5) When the only or last indorsement is an indorsement in blank.

Language of instrument.

SEC. 1409. LANGUAGE OF INSTRUMENT.—The instrument need not follow the language of chapters 66 to 69 of this code, but any terms are sufficient which clearly indicate an intention to conform to the requirements thereof.

True date.

SEC. 1410. TRUE DATE.—Where the instrument or an acceptance or any indorsement thereon is dated, such date is deemed prima facie to be the true date of the making, drawing, acceptance, or indorsement as the case may be.

Ante or post dating.

SEC. 1411. ANTE OR POST DATING.—The instrument is not invalid for the reason only that it is antedated or postdated, provided this is not done for an illegal or fraudulent purpose. The person to whom an instrument so dated is delivered acquires the title thereto as of the date of delivery.

Insertion of date.

SEC. 1412. INSERTION OF DATE.—Where an instrument expressed to be payable at a fixed period after date is issued undated, or where the acceptance of an instrument payable at a fixed period after sight is undated, any holder may insert therein the true date of issue or acceptance, and the instrument shall be payable accordingly. The insertion of a wrong date does not avoid the instrument in the hands of a subsequent holder in due course; but as to him, the date so inserted is to be regarded as the true date.

Filling up blanks.

SEC. 1413. FILLING UP BLANKS.—Where the instrument is wanting in any material particular, the person in possession thereof has a prima facie authority to complete it by filling up the blanks therein. And a signature on a blank paper delivered by the person making the signature in order that the paper may be converted into a negotiable instrument operates as a prima facie authority to fill it up as such for any amount. In order, however, that any such instrument when completed may be enforced against any person who became a party thereto prior to its completion, it must be filled up

strictly in accordance with the authority given and within a reasonable time. But if any such instrument, after completion, is negotiated to a holder in due course, it is valid and effectual for all purposes in his hands, and he may enforce it as if it had been filled up strictly in accordance with the authority given and within a reasonable time.

Incomplete instrument not delivered.

SEC. 1414. INCOMPLETE INSTRUMENT NOT DELIVERED.—Where an incomplete instrument has not been delivered it will not, if completed and negotiated, without authority, be a valid contract in the hands of any holder, as against any person whose signature was placed thereon before delivery.

Delivery necessary.

SEC. 1415. DELIVERY NECESSARY.—Every contract on a negotiable instrument is incomplete and revocable until delivery of the instrument for the purpose of giving effect thereto. As between immediate parties, and as regards a remote party other than a holder in due course, the delivery, in order to be effectual, must be made either by or under the authority of the party making, drawing, accepting, or indorsing, as the case may be; and in such case the delivery may be shown to have been conditional, or for a special purpose only, and not for the purpose of transferring the property in the instrument. But where the instrument is in the hands of a holder in due course, a valid delivery thereof by all parties prior to him so as to make them liable to him is conclusively presumed. And where the instrument is no longer in the possession of a party whose signature appears thereon, a valid and intentional delivery by him is presumed until the contrary is proved.

Rules of construction.

SEC. 1416. RULES OF CONSTRUCTION.—Where the language of the instrument is ambiguous or there are omissions therein, the following rules of construction apply:

(1) Where the sum payable is expressed in words and also in figures and there is a discrepancy between the two, the sum denoted by the words is the sum payable; but if the words are ambiguous or uncertain, reference may be had to the figures to fix the amount;

(2) Where the instrument provides for the payment of interest, without specifying the date from which interest is to run, the interest runs from the date of the instrument, and if the instrument is undated, from the issue thereof;

(3) Where the instrument is not dated, it will be considered to be dated as of the time it was issued;

(4) Where there is a conflict between the written and printed provisions of the instrument, the written provisions prevail;

(5) Where the instrument is so ambiguous that there is doubt whether it is a bill or note, the holder may treat it as either at his election;

(6) Where a signature is so placed upon the instrument that it is not clear in what capacity the person making the same intended to sign, he is to be deemed an indorser;

(7) Where an instrument containing the words "I promise to pay" is signed by two or more persons, they are deemed to be jointly and severally liable thereon.

Liability on.

SEC. 1417. LIABILITY ON INSTRUMENT.—No person is liable on the instrument whose signature does not appear thereon, except as herein otherwise expressly provided. But one who signs in a trade or assumed name will be liable to the same extent as if he had signed in his own name.

Signature by agent.

SEC. 1418. SIGNATURE BY AGENT.—The signature of any party may be made by a duly authorized agent. No particular form of appointment is necessary for this purpose; and the authority of the agent may be established as in other cases of agency.

Liability of agent.

SEC. 1419. LIABILITY OF AGENT.—Where the instrument contains or a person adds to his signature words indicating that he signs for or on behalf of a principal, or in a representative capacity, he is not liable on the instrument if he was duly authorized; but the mere addition of words describing him as an agent, or as filling a representative character, without disclosing his principal, does not exempt him from personal liability.

Signature by "procuration."

SEC. 1420. SIGNATURE BY "PROCURATION."—A signature by "procuration" operates as notice that the agent has but a limited authority to sign, and the principal is bound only in case the agent in so signing acted within the actual limits of his authority.

Indorsement by corporation or infant.

SEC. 1421. INDORSEMENT BY CORPORATION OR INFANT.—The indorsement or assignment of the instrument by a corporation or by an infant passes the property therein, notwithstanding that from want of capacity the corporation or infant may incur no liability thereon.

Forged signature.

SEC. 1422. FORGED SIGNATURE.—When a signature is forged or made without the authority of the person whose signature it purports to be, it is wholly inoperative, and no right to retain the instrument, or to give a discharge therefor, or to enforce payment thereof against any party thereto, can be acquired through or under such signature, unless the party, against whom it is sought to enforce such right, is precluded from setting up the forgery or want of authority.

CONSIDERATION

Presumption of consideration.

SEC. 1423. PRESUMPTION OF CONSIDERATION.—Every negotiable instrument is deemed prima facie to have been issued for a valuable consideration; and every person whose signature appears thereon to have become a party thereto for value.

What constitutes consideration.

SEC. 1424. CONSIDERATION, WHAT CONSTITUTES.—Value is any consideration sufficient to support a simple contract. An antecedent or preexisting debt constitutes value, and is deemed such whether the instrument is payable on demand or at a future time.

Holder for value.

SEC. 1425. HOLDER FOR VALUE.—Where value has at any time been given for the instrument, the holder is deemed a holder for value in respect to all parties who become such prior to that time.

Lien on instrument.

SEC. 1426. LIEN ON AN INSTRUMENT.—Where the holder has a lien on the instrument, arising either from contract or by implication of law, he is deemed a holder for value to the extent of his lien.

Want of consideration.

SEC. 1427. EFFECT OF WANT OF CONSIDERATION.—Absence or failure of consideration is matter of defense as against any person not a holder in due course; and partial failure of consideration is a defense pro tanto, whether the failure is an ascertained and liquidated amount or otherwise.

Liability of accommodation party.

SEC. 1428. LIABILITY OF ACCOMMODATION PARTY.—An accommodation party is one who has signed the instrument as maker, drawer, acceptor, or indorser, without receiving value therefor, and for the purpose of lending his name to some other person. Such a person is liable on the instrument to a holder for value, notwithstanding such holder at the time of taking the instrument knew him to be only an accommodation party.

NEGOTIATION

Negotiation.

SEC. 1429. NEGOTIATION.—An instrument is negotiated when it is transferred from one person to another in such manner as to constitute the transferee the holder thereof. If payable to bearer it is negotiated by delivery; if payable to order it is negotiated by the indorsement of the holder completed by delivery.

Indorsement.

SEC. 1430. INDORSEMENT.—The indorsement must be written on the instrument itself or upon a paper attached thereto. The signature of the indorser, without additional words, is a sufficient indorsement.

Indorsement of entire instrument.

SEC. 1431. INDORSEMENT OF ENTIRE INSTRUMENT.—The indorsement must be an indorsement of the entire instrument. An indorsement which purports to transfer to the indorsee a part only of the amount payable, or which purports to transfer the instrument to two or more indorsees severally, does not operate as a negotiation of the instrument. But where the instrument has been paid in part, it may be indorsed as to the residue.

Kinds of indorsement.

SEC. 1432. KINDS OF INDORSEMENT.—An indorsement may be either special or in blank; and it may also be either restrictive or qualified, or conditional.

Special.

SEC. 1433. SPECIAL INDORSEMENT.—A special indorsement specifies the person to whom, or to whose order, the instrument is to be payable; and the indorsement of such indorsee is necessary to the further negotiation of the instrument. An indorsement in blank specifies no indorsee, and an instrument so indorsed is payable to bearer and may be negotiated by delivery.

Blank; how changed to special.

SEC. 1434. BLANK INDORSEMENT, HOW CHANGED TO SPECIAL INDORSEMENT.—The holder may convert a blank indorsement into a special indorsement by writing over the signature of the indorser in blank any contract consistent with the character of the indorsement.

Restrictive.

SEC. 1435. INDORSEMENT RESTRICTIVE.—An indorsement is restrictive, which either—

(1) Prohibits the further negotiation of the instrument; or

(2) Constitutes the indorsee the agent of the indorser; or

(3) Vests the title in the indorsee in trust for or to the use of some other person.

But the mere absence of words implying power to negotiate does not make an indorsement restrictive.

Rights conferred.

SEC. 1436. RIGHTS CONFERRED.—A restrictive indorsement confers upon the indorsee the right—

(1) To receive payment of the instrument;

(2) To bring any action thereon that the indorser could bring;

(3) To transfer his rights as such indorsee, where the form of the indorsement authorizes him to do so.

But all subsequent indorsees acquire only the title of the first indorsee under the restrictive indorsement.

Qualified.

SEC. 1437. QUALIFIED INDORSEMENT.—A qualified indorsement constitutes the indorser a mere assignor of the title to the instrument. It may be made by adding to the indorser's signature the words "without recourse" or any words of similar import. Such an indorsement does not impair the negotiable character of the instrument.

Conditional.

SEC. 1438. CONDITIONAL INDORSEMENT.—Where an indorsement is conditional, a party required to pay the instrument may disregard the condition, and make payment to the indorsee or his transferee, whether the condition has been fulfilled or not. But any person to whom an instrument so indorsed is negotiated will hold the same, or the proceeds thereof, subject to the rights of the person indorsing conditionally.

Payable to bearer.

SEC. 1439. PAYABLE TO BEARER.—Where an instrument, payable to bearer, is indorsed specially it may nevertheless be further negotiated by delivery; but the person indorsing specially is liable as indorser to only such holders as make title through his indorsement.

Payable to two or more persons.

SEC. 1440. PAYABLE TO TWO OR MORE PERSONS.—Where an instrument is payable to the order of two or more payees or indorsees who

are not partners, all must indorse, unless the one indorsing has authority to indorse for the others.

Indorsed to person as "cashier."

SEC. 1441. INDORSED TO PERSON AS "CASHIER."—Where an instrument is drawn or indorsed to person as "cashier" or other fiscal officer of a bank or corporation, it is deemed prima facie to be payable to the bank or corporation of which he is such officer, and may be negotiated by either the indorsement of the bank or corporation or the indorsement of the officer.

Name misspelled.

SEC. 1442. NAME MISSPELLED.—Where the name of a payee or indorsee is wrongly designated or misspelled, he may indorse the instrument as therein described, adding, if he thinks fit, his proper signature.

In representative capacity.

SEC. 1443. IN REPRESENTATIVE CAPACITY.—Where any person is under obligation to indorse in a representative capacity, he may indorse in such terms as to negative personal liability.

Time of indorsement.

SEC. 1444. TIME OF INDORSEMENT.—Except where an indorsement bears date after the maturity of the instrument, every negotiation is deemed prima facie to have been effected before the instrument was overdue.

Place of indorsement.

SEC. 1445. PLACE OF INDORSEMENT.—Except where the contrary appears, every indorsement is presumed prima facie to have been made at the place where the instrument is dated.

Continuation of negotiability.

SEC. 1446. CONTINUATION.—An instrument negotiable in its origin continues to be negotiable until it has been restrictively indorsed or discharged by payment or otherwise.

Striking out indorsement.

SEC. 1447. STRIKING OUT INDORSEMENT.—The holder may at any time strike out any indorsement which is not necessary to his title. The indorser whose indorsement is struck out, and all indorsers subsequent to him, are thereby relieved from liability on the instrument.

Transfer without indorsement.

SEC. 1448. TRANSFER WITHOUT INDORSEMENT.—Where the holder of an instrument payable to his order transfers it for value without indorsing it, the transfer vests in the transferee such title as the transferrer had therein, and the transferee acquires, in addition, the right to have the indorsement of the transferrer. But for the purpose of determining whether the transferee is a holder in due course, the negotiation takes effect as to the time when the indorsement is actually made.

Prior party may negotiate.

SEC. 1449. PRIOR PARTY MAY NEGOTIATE.—Where an instrument is negotiated back to a prior party such party may, subject to the provisions of chapters 66 to 69 of this code, reissue and further negotiate the same. But he is not entitled to enforce payment thereof against any intervening party to whom he was personally liable.

Ante, p. 1307; *post*, p. 1329.

Rights of holder.

RIGHTS OF THE HOLDER

To sue in own name.

SEC. 1450. RIGHT TO SUE.—The holder of a negotiable instrument may sue thereon in his own name and payment to him in due course discharges the instrument.

Holder in due course.

SEC. 1451. HOLDER IN DUE COURSE.—A holder in due course is a holder who has taken the instrument under the following conditions:

(1) That it is complete and regular upon its face;

(2) That he became the holder of it before it was overdue, and without notice that it had been previously dishonored, if such was the fact;

(3) That he took it in good faith and for value;

(4) That at the time it was negotiated to him he had no notice of any infirmity in the instrument or defect in the title of the person negotiating it.

CROSS REFERENCES

Notice before full amount paid, see section 1453.
When person not deemed a holder in due course, see section 1452.
Who deemed a holder in due course, see section 1458.

Not holder in due course.

SEC. 1452. NOT HOLDER IN DUE COURSE.—Where an instrument payable on demand is negotiated an unreasonable length of time after its issue, the holder is not deemed a holder in due course.

CROSS REFERENCES

Ante, p. 1313. Notice before full amount paid, see section 1453.
Who deemed a holder in due course, see sections 1451 and 1458.

Notice before full amount paid.

SEC. 1453. NOTICE BEFORE FULL AMOUNT PAID.—Where the transferee receives notice of any infirmity in the instrument or defect in the title of the person negotiating the same before he has paid the full amount agreed to be paid therefor, he will be deemed a holder in due course only to the extent of the amount theretofore paid by him.

CROSS REFERENCES

Rights of holder in due course, see section 1456.
Ante, p. 1313. Who deemed a holder in due course, see sections 1451 and 1458.
Who not deemed a holder in due course, see section 1452.

When title defective.

SEC. 1454. WHEN TITLE DEFECTIVE.—The title of a person who negotiates an instrument is defective within the meaning of chapters 66 to 69 of this code, when he obtained the instrument, or any signature thereto, by fraud, duress, or force and fear, or other unlawful means, or for an illegal consideration, or when he negotiates it in breach of faith, or under such circumstances as amount to a fraud.

Ante, p. 1307; *post*, p. 1329.

Notice of defect.

SEC. 1455. NOTICE OF DEFECT.—To constitute notice of an infirmity in the instrument or defect in the title of the person negotiating the same, the person to whom it is negotiated must have had actual knowledge of the infirmity or defect, or knowledge of such facts that his action in taking the instrument amounted to bad faith.

Rights of holder in due course.

SEC. 1456. RIGHTS OF HOLDER IN DUE COURSE.—A holder in due course holds the instrument free from any defect of title of prior parties, and free from defenses available to prior parties among themselves, and may enforce payment of the instrument for the full amount thereof against all parties liable thereon.

CROSS REFERENCES

Notice before full amount paid, see section 1453.
Ante, p. 1313. Who deemed holder in due course, see sections 1451 and 1458.
Who not deemed a holder in due course, see section 1452.

Defense against holder not in due course.

SEC. 1457. WHEN SUBJECT TO ORIGINAL.—In the hands of any holder other than a holder in due course, a negotiable instrument is subject to the same defenses as if it were nonnegotiable. But a holder who derives his title through a holder in due course, and who is not himself a party to any fraud or illegality affecting the instrument, has all the rights of such former holder in respect of all parties prior to the latter.

Who deemed holder in due course.

SEC. 1458. WHO DEEMED HOLDER IN DUE COURSE.—Every holder is deemed prima facie to be a holder in due course; but when it is shown that the title of any person who has negotiated the instrument was defective, the burden is on the holder to prove that he or some person under whom he claims acquired the title as holder in due course. But the last-mentioned rule does not apply in favor of a

party who became bound on the instrument prior to the acquisition of such defective title.

CROSS REFERENCES

Notice before full amount paid, see section 1453. *Ante*, p. 1314.
Rights of holder in due course, see section 1456.
What constitutes a holder in due course, see section 1451. *Ante*, p. 1313.
When person not deemed a holder in due course, see section 1452. *Ante*, p. 1314.

LIABILITIES OF PARTIES

Liabilities of parties.

Of maker.

SEC. 1459. LIABILITY OF MAKER.—The maker of a negotiable instrument by making it engages that he will pay it according to its tenor, and admits the existence of the payee and his then capacity to indorse.

Of drawer.

SEC. 1460. LIABILITY OF DRAWER.—The drawer by drawing the instrument admits the existence of the payee and his then capacity to indorse; and engages that on due presentment the instrument will be accepted or paid, or both, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it. But the drawer may insert in the instrument an express stipulation negativing or limiting his own liability to the holder.

Of acceptor.

SEC. 1461. LIABILITY OF ACCEPTOR.—The acceptor by accepting the instrument engages that he will pay it according to the tenor of his acceptance; and admits—

(1) The existence of the drawer, the genuineness of his signature, and his capacity and authority to draw the instrument; and

(2) The existence of the payee and his then capacity to indorse.

Person deemed indorser.

SEC. 1462. PERSON DEEMED INDORSER.—A person placing his signature upon an instrument otherwise than as maker, drawer, or acceptor, is deemed to be an indorser, unless he clearly indicates by appropriate words his intention to be bound in some other capacity.

Liability of irregular indorser.

SEC. 1463. LIABILITY OF IRREGULAR INDORSER.—Where a person, not otherwise a party to an instrument, places thereon his signature in blank before delivery, he is liable as indorser, in accordance with the following rules:

(1) If the instrument is payable to the order of a third person, he is liable to the payee and to all subsequent parties.

(2) If the instrument is payable to the order of the maker or drawer, or is payable to bearer, he is liable to all parties subsequent to the maker or drawer.

(3) If he signs for the accommodation of the payee, he is liable to all parties subsequent to the payee.

Warranty when negotiation by delivery, etc.

SEC. 1464. WARRANTY WHEN NEGOTIATION BY DELIVERY, ETC.—Every person negotiating an instrument by delivery or by a qualified indorsement, warrants—

(1) That the instrument is genuine and in all respects what it purports to be;

(2) That he has a good title to it;

(3) That all prior parties had capacity to contract;

(4) That he has no knowledge of any fact which would impair the validity of the instrument or render it valueless.

But when the negotiation is by delivery only, the warranty extends in favor of no holder other than the immediate transferee.

The provisions of subdivision three of this section do not apply to persons negotiating public or corporation securities, other than bills and notes.

Of general indorser.

SEC. 1465. LIABILITY OF GENERAL INDORSER.—Every indorser who indorses without qualification, warrants to all subsequent holders in due course—

Ante, p. 1315.

(1) The matters and things mentioned in subdivisions 1, 2, and 3 of section 1464; and

(2) That the instrument is at the time of his indorsement valid and subsisting.

And, in addition, he engages that on due presentment it shall be accepted or paid, or both, as the case may be, according to its tenor, and that if it be dishonored, and the necessary proceedings on dishonor be duly taken, he will pay the amount thereof to the holder, or to any subsequent indorser who may be compelled to pay it.

When negotiable by delivery.

SEC. 1466. WHEN NEGOTIABLE BY DELIVERY.—Where a person places his indorsement on an instrument negotiable by delivery he incurs all the liabilities of an indorser.

Order of liability of indorsers.

SEC. 1467. LIABILITY OF INDORSERS.—As respects one another indorsers are liable prima facie in the order in which they indorse; but evidence is admissible to show that as between or among themselves they have agreed otherwise. Joint payees or joint indorsees who indorse are deemed to indorse jointly and severally.

Liability of broker or agent.

Ante, p. 1315.

SEC. 1468. LIABILITY OF BROKER OR AGENT.—Where a broker or other agent negotiates an instrument without indorsement he incurs all the liabilities prescribed by section 1464, unless he discloses the name of his principal and the fact that he is acting only as agent.

PRESENTMENT FOR PAYMENT

Presentment for payment.

SEC. 1469. PRESENTMENT FOR PAYMENT.—Presentment for payment is not necessary in order to charge the person primarily liable on the instrument; but if the instrument is, by its terms, payable at a special place, and he is able and willing to pay it there at maturity, such ability and willingness are equivalent to a tender of payment upon his part. But except as herein otherwise provided, presentment for payment is necessary in order to charge the drawer and indorsers.

When instrument payable on due date.

SEC. 1470. PRESENTMENT FOR PAYMENT.—Where the instrument is not payable on demand, presentment must be made on the day it falls due. Where it is payable on demand, presentment must be made within a reasonable time after its issue, except that in the case of a bill of exchange, presentment for payment will be sufficient if made within a reasonable time after the last negotiation thereof.

What constitutes sufficient presentment.

SEC. 1471. WHAT CONSTITUTES SUFFICIENT PRESENTMENT.—Presentment for payment, to be sufficient, must be made—

(1) By the holder, or by some person authorized to receive payment, on his behalf;

(2) At a reasonable hour on a business day;

(3) At a proper place as herein defined;

(4) To the person primarily liable on the instrument, or if he is absent or inaccessible, to any person found at the place where the presentment is made.

Place of.

SEC. 1472. PLACE OF PRESENTMENT.—Presentment for payment is made at the proper place—

(1) Where a place of payment is specified in the instrument and it is there presented;

(2) Where no place of payment is specified, but the address of the person to make payment is given in the instrument and it is there presented;

(3) Where no place of payment is specified and no address is given and the instrument is presented at the usual place of business or residence of the person to make payment;

(4) In any other case if presented to the person to make payment wherever he can be found, or if presented at his last known place of business or residence.

Must be exhibited.

SEC. 1473. MUST BE EXHIBITED.—The instrument must be exhibited to the person from whom payment is demanded, and when it is paid must be delivered up to the party paying it.

When payable at bank.

SEC. 1474. WHERE PAYABLE AT BANK.—Where the instrument is payable at a bank, presentment for payment must be made during banking hours, unless the person to make payment has no funds there to meet it at any time during the day, in which case presentment at any hour before the bank is closed on that day is sufficient.

When person liable is dead.

SEC. 1475. WHEN PERSON LIABLE IS DEAD.—Where the person primarily liable on the instrument is dead, and no place of payment is specified, presentment for payment must be made to his personal representative, if such there be, and if, with the exercise of reasonable diligence, he can be found.

Persons liable as partners.

SEC. 1476. PERSONS LIABLE AS PARTNERS.—Where the persons primarily liable on the instrument are liable as partners, and no place of payment is specified, presentment for payment may be made to any one of them, even though there has been a dissolution of the firm.

Joint debts.

SEC. 1477. JOINT DEBTS.—Where there are several persons, not partners, primarily liable on the instrument, and no place of payment is specified, presentment must be made to them all.

Presentment for payment not required, when.

SEC. 1478. PRESENTMENT FOR PAYMENT NOT REQUIRED WHEN.—Presentment for payment is not required in order to charge the drawer where he has no right to expect or require that the drawee or acceptor will pay the instrument.

Accommodation parties.

SEC. 1479. PRESENTMENT FOR PAYMENT NOT REQUIRED WHEN.—Presentment for payment is not required in order to charge an indorser where the instrument was made or accepted for his accommodation and he has no reason to expect that the instrument will be paid if presented.

Delay excused.

SEC. 1480. DELAY EXCUSED.—Delay in making presentment for payment is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, presentment must be made with reasonable diligence.

When dispensed with.

SEC. 1481. WHEN DISPENSED WITH.—Presentment for payment is dispensed with—

(1) Where after the exercise of reasonable diligence presentment as required by this title can not be made;

(2) Where the drawee is a fictitious person;

(3) By waiver of presentment, express or implied.

When dishonored by nonpayment.

SEC. 1482. WHEN DISHONORED BY NONPAYMENT.—The instrument is dishonored by nonpayment when—

(1) It is duly presented for payment and payment is refused or can not be obtained; or

(2) Presentment is excused and the instrument is overdue and unpaid.

Liability of person secondarily liable.
Ante, p. 1307; *post*, p. 1329.

SEC. 1483. LIABILITY OF PERSON SECONDARILY LIABLE.—Subject to the provisions of chapters 66 to 69 of this code, when the instrument is dishonored by nonpayment, an immediate right of recourse to all parties secondarily liable thereon accrues to the holder.

Time of payment.

SEC. 1484. TIME OF PAYMENT.—Every negotiable instrument is payable at the time fixed therein without grace. When the day of maturity falls upon Sunday, or a holiday, the instrument is payable on the next succeeding business day. Instruments falling due on Saturday are to be presented for payment on the next succeeding

business day, except that instruments payable on demand may, at the option of the holder, be presented for payment before twelve o'clock noon on Saturday when that entire day is not a holiday.

Determination of time.

SEC. 1485. DETERMINATION OF TIME.—Where the instrument is payable at a fixed period after date, after sight, or after the happening of a specified event, the time of payment is determined by excluding the day from which the time is to begin to run, and by including the date of payment.

CROSS REFERENCE

Ante, p. 1124. Excluding first day and including last day, see section 9.

Payable at bank.

SEC. 1486. WHERE PAYABLE AT BANK.—Where the instrument is made payable at a bank it is equivalent to an order to the bank to pay the same for the account of the principal debtor thereon.

Payment in due course.

SEC. 1487. PAYMENT IN DUE COURSE.—Payment is made in due course when it is made at or after the maturity of the instrument to the holder thereof in good faith and without notice that his title is defective.

NOTICE OF DISHONOR

Notice of dishonor.

SEC. 1488. NOTICE OF DISHONOR.—Except as herein otherwise provided, when a negotiable instrument has been dishonored by nonacceptance or nonpayment, notice of dishonor must be given to the drawer and to each indorser, and any drawer or indorser to whom such notice is not given is discharged.

CROSS REFERENCES

Post, p. 1319. Notice to bankrupt, see section 1500.
Post, p. 1319. Notice to partners, see section 1498.
Post, p. 1319. Notice to persons jointly interested, see section 1499.
Post, p. 1320. Notice to subsequent party, see section 1506.
Post, p. 1319. Notice where person is dead, see section 1497.
Post, p. 1320. When notice need not be given to drawer, see section 1513.
Post, p. 1321. When notice need not be given to indorser, see section 1514.

By whom given.

SEC. 1489. BY WHOM GIVEN.—The notice may be given by or on behalf of the holder, or by or on behalf of any party to the instrument who might be compelled to pay it to the holder, and who upon taking it up would have a right to reimbursement from the party to whom the notice is given.

Notice of dishonor, by agent.

SEC. 1490. NOTICE OF DISHONOR.—Notice of dishonor may be given by an agent either in his own name or in the name of any party entitled to give notice, whether that party be his principal or not.

CROSS REFERENCE

When agent may give notice, see section 1493.

Effect of notice, by holder.

SEC. 1491. EFFECT OF NOTICE.—Where notice is given by or on behalf of the holder, it inures for the benefit of all subsequent holders and all prior parties who have a right of recourse against the party to whom it is given.

By party entitled to give.

SEC. 1492. EFFECT WHERE NOTICE IS GIVEN BY PARTY ENTITLED THERETO.—Where notice is given by or on behalf of a party entitled to give notice, it inures for the benefit of the holder and all parties subsequent to the party to whom notice is given.

When agent may give.

SEC. 1493. WHEN AGENT MAY GIVE NOTICE.—Where the instrument has been dishonored in the hands of an agent, he may either himself give notice to the parties liable thereon or he may give notice to his

principal. If he gives notice to his principal, he must do so within the same time as if he were the holder, and the principal upon the receipt of such notice has himself the same time for giving notice as if the agent had been an independent holder.

CROSS REFERENCE

Notice given by agent, see section 1490. *Ante*, p. 1318.

When sufficient.

SEC. 1494. WHEN NOTICE SUFFICIENT.—A written notice need not be signed, and an insufficient written notice may be supplemented and validated by verbal communication. A misdescription of the instrument does not vitiate the notice unless the party to whom the notice is given is in fact misled thereby.

CROSS REFERENCE

Form of notice, see section 1495.

Form of.

SEC. 1495. FORM OF NOTICE.—The notice may be in writing or merely oral and may be given in any terms which sufficiently identify the instrument, and indicate that it has been dishonored by nonacceptance or nonpayment. It may in all cases be given by delivering it personally or through the mails.

To whom given.

SEC. 1496. TO WHOM NOTICE GIVEN.—Notice of dishonor may be given either to the party himself or to his agent in that behalf.

Where party is dead.

SEC. 1497. NOTICE WHERE PARTY IS DEAD.—When any party is dead, and his death is known to the party giving notice, the notice must be given to a personal representative, if there be one, and if with reasonable diligence he can be found. If there be no personal representative, notice may be sent to the last residence or last place of business of the deceased.

To partners.

SEC. 1498. NOTICE TO PARTNERS.—Where the parties to be notified are partners, notice to any one partner is notice to the firm, even though there has been a dissolution.

To persons jointly liable.

SEC. 1499. NOTICE TO PERSONS JOINTLY LIABLE.—Notice to joint parties who are not partners must be given to each of them, unless one of them has authority to receive such notice for the others.

To bankrupt.

SEC. 1500. NOTICE TO BANKRUPT.—Where a party has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, notice may be given either to the party himself or to his trustee or assignee.

Time limit on giving of.

Ante, p. 1307; *post*, p. 1329.

SEC. 1501. TIME WITHIN WHICH NOTICE MUST BE GIVEN.—Notice may be given as soon as the instrument is dishonored; and unless delay is excused as hereinafter provided, must be given within the times fixed by chapters 66 to 69 of this code.

Where parties reside in same place.

SEC. 1502. NOTICE WHERE PARTIES RESIDE IN SAME PLACE.—Where the person giving and the person to receive notice reside in the same place, notice must be given within the following times:

(1) If given at the place of business of the person to receive notice, it must be given before the close of business hours on the day following;

(2) If given at his residence, it must be given before the usual hours of rest on the day following;

(3) If sent by mail, it must be deposited in the post office in time to reach him in usual course on the day following.

Where reside in different places.

SEC. 1503. NOTICE WHERE PARTIES RESIDE IN DIFFERENT PLACES.—Where the person giving and the person to receive notice reside in different places, the notice must be given within the following times:

(1) If sent by mail, it must be deposited in the post office in time to go by mail the day following the day of dishonor, or if

there be no mail at a convenient hour on that day, by the next mail thereafter;

(2) If given otherwise than through the post office, then within the time that notice would have been received in due course of mail, if it had been deposited in the post office within the time specified in the last subdivision.

Notice deemed given.

SEC. 1504. NOTICE DEEMED GIVEN.—Where notice of dishonor is duly addressed and deposited in the post office, the sender is deemed to have given due notice, notwithstanding any miscarriage in the mails.

Deposit in post office.

SEC. 1505. DEPOSIT IN POST OFFICE.—Notice is deemed to have been deposited in post office when deposited in any branch post office or in any letter box under the control of the Post Office Department.

Notice to subsequent party.

SEC. 1506. NOTICE TO SUBSEQUENT PARTY.—Where a party receives notice of dishonor, he has, after the receipt of such notice, the same time for giving notice to antecedent parties that the holder has after the dishonor.

Where notice may be sent.

SEC. 1507. WHERE NOTICE MAY BE SENT.—Where a party has added an address to his signature, notice of dishonor must be sent to that address; but if he has not given such address, then the notice must be sent as follows:

(1) Either to the post office nearest to his place of residence, or to the post office where he is accustomed to receive his letters; or

(2) If he live in one place, and have his place of business in another, notice may be sent to either place; or

(3) If he is sojourning in another place, notice may be sent to the place where he is sojourning.

But where the notice is actually received by the party within the time specified in chapters 66 to 69 of this code, it will be sufficient, though not sent in accordance with the requirements of this section.

CROSS REFERENCE

Effect of miscarriage of mails, see section 1504.

Waiver of.

SEC. 1508. WAIVER OF NOTICE.—Notice of dishonor may be waived, either before the time of giving notice has arrived, or after the omission to give due notice, and the waiver may be express or implied.

Who is affected by waiver.

SEC. 1509. WHO IS AFFECTED BY WAIVER.—Where the waiver is embodied in the instrument itself, it is binding upon all parties; but where it is written above the signature of an indorser, it binds him only.

Waiver of protest.

SEC. 1510. WAIVER OF PROTEST.—A waiver of protest, whether in the case of a foreign bill of exchange or other negotiable instrument, is deemed to be a waiver not only of formal protest, but also of presentment and notice of dishonor.

Notice dispensed with.

SEC. 1511. NOTICE DISPENSED WITH.—Notice of dishonor is dispensed with when, after the exercise of reasonable diligence, it can not be given to or does not reach the parties sought to be charged.

Delay excused.

SEC. 1512. DELAY EXCUSED.—Delay in giving notice of dishonor is excused when the delay is caused by circumstances beyond the control of the holder, and not imputable to his default, misconduct, or negligence. When the cause of delay ceases to operate, notice must be given with reasonable diligence.

When notice of dishonor not required.

SEC. 1513. WHEN NOTICE OF DISHONOR IS NOT REQUIRED.—Notice of dishonor is not required to be given to the drawer in either of the following cases:

(1) Where the drawer and drawee are the same person;

(2) When the drawee is a fictitious person or a person not having capacity to contract;

(3) When the drawer is the person to whom the instrument is presented for payment;

(4) Where the drawer has no right to expect or require that the drawee or acceptor will honor the instrument;

(5) Where the drawer has countermanded payment.

When not required to be given indorser.

SEC. 1514. WHEN NOT REQUIRED TO BE GIVEN INDORSER.—Notice of dishonor is not required to be given to an indorser in either of the following cases:

(1) Where the drawee is a fictitious person or a person not having capacity to contract, and the indorser was aware of the fact at the time he indorsed the instrument;

(2) Where the indorser is the person to whom the instrument is presented for payment;

(3) Where the instrument was made or accepted for his accommodation.

Notice of nonpayment where acceptance refused.

SEC. 1515. NOTICE OF NONPAYMENT WHERE ACCEPTANCE REFUSED.—Where due notice of dishonor by nonacceptance has been given, notice of a subsequent dishonor by nonpayment is not necessary, unless in the meantime the instrument has been accepted.

Effect of omission.

SEC. 1516. EFFECT OF OMISSION.—An omission to give notice of dishonor by nonacceptance does not prejudice the rights of a holder in due course subsequent to the omission.

Protest.

SEC. 1517. PROTEST.—Where any negotiable instrument has been dishonored it may be protested for nonacceptance or nonpayment, as the case may be; but protest is not required except in the case of foreign bills of exchange.

Discharge of negotiable instruments.

DISCHARGE OF NEGOTIABLE INSTRUMENTS

How discharged.

SEC. 1518. HOW DISCHARGED.—A negotiable instrument is discharged—

(1) By payment in due course by or on behalf of the principal debtor;

(2) By payment in due course by the party accommodated, where the instrument is made or accepted for accommodation;

(3) By the intentional cancellation thereof by the holder;

(4) By any other act which will discharge a simple contract for the payment of money;

(5) When the principal debtor becomes the holder of the instrument at or after maturity in his own right.

Persons secondarily liable discharged.

SEC. 1519. PERSONS SECONDARILY LIABLE DISCHARGED.—A person secondarily liable on the instrument is discharged—

(1) By any act which discharges the instrument;

(2) By the intentional cancellation of his signature by the holder;

(3) By the discharge of a prior party;

(4) By a valid tender of payment made by a prior party;

(5) By a release of the principal debtor, unless the holder's right of recourse against the party secondarily liable is expressly reserved;

(6) By any agreement binding upon the holder to extend the time of payment, or to postpone the holder's right to enforce the instrument, unless made with the assent of the party secondarily liable, or unless the right of recourse against such party is expressly reserved.

Right of party who discharged.

SEC. 1520. RIGHT OF PARTY WHO DISCHARGED.—Where the instrument is paid by a party secondarily liable thereon, it is not discharged; but the party so paying it is remitted to his former rights

as regards all prior parties, and he may strike out his own and all subsequent indorsements, and again negotiate the instrument, except—

(1) Where it is payable to the order of a third person, and has been paid by the drawer; and

(2) Where it was made or accepted for accommodation, and has been paid by the party accommodated.

Renunciation by holder.

SEC. 1521. RENUNCIATION BY HOLDER.—The holder may expressly renounce his rights against any party to the instrument, before, at, or after its maturity. An absolute and unconditional renunciation of his rights against the principal debtor made at or after the maturity of the instrument discharges the instrument. But a renunciation does not affect the rights of a holder in due course without notice. A renunciation must be in writing, unless the instrument is delivered up to the person primarily liable thereon.

Cancellation.

SEC. 1522. CANCELLATION.—A cancellation made unintentionally, or under a mistake or without the authority of the holder, is inoperative; but where an instrument or any signature thereon appears to have been canceled the burden of proof lies on the party who alleges that the cancellation was made unintentionally, or under a mistake or without authority.

Alteration.

SEC. 1523. ALTERATION.—Where a negotiable instrument is materially altered without the assent of all parties liable thereon, it is avoided, except as against a party who has himself made, authorized or assented to the alteration, and subsequent indorsers.

But when an instrument has been materially altered and is in the hands of a holder in due course, not a party to the alteration, he may enforce payment thereof according to its original tenor.

Material alteration.

SEC. 1524. MATERIAL ALTERATION.—Any alteration which changes—

(1) The date;

(2) The sum payable, either for principal or interest;

(3) The time or place of payment;

(4) The number or the relations of the parties;

(5) The medium or currency in which payment is to be made;

Or which adds a place of payment where no place of payment is specified, or any other change or addition which alters the effect of the instrument in any respect, is a material alteration.

BILLS OF EXCHANGE.

CHAPTER 67.—BILLS OF EXCHANGE

Ante, p. 1307; *post*, p. 1329.

NOTE.—Chapters 66 to 69 of this code comprise the Uniform Negotiable Instruments Act.

Form and interpretation.

FORM AND INTERPRETATION

Defined.

SEC. 1525. BILL OF EXCHANGE DEFINED.—A bill of exchange is an unconditional order in writing addressed by one person to another, signed by the person giving it, requiring the person to whom it is addressed to pay on demand or at a fixed or determinable future time a sum certain in money to order or to bearer.

Not an assignment of funds.

SEC. 1526. NOT AN ASSIGNMENT OF FUNDS.—A bill of itself does not operate as an assignment of the funds in the hands of the drawee available for the payment thereof, and the drawee is not liable on the bill unless and until he accepts the same.

Addressed to more than one drawee.

SEC. 1527. ADDRESSED TO MORE THAN ONE DRAWEE.—A bill may be addressed to two or more drawees jointly, whether they are partners or not; but not to two or more drawees in the alternative or in succession.

Inland and foreign bills.

SEC. 1528. INLAND AND FOREIGN BILLS.—An inland bill of exchange is a bill which is, or on its face purports to be, both drawn

and payable within the Canal Zone. Any other bill is a foreign bill. Unless the contrary appears on the face of the bill, the holder may treat it as an inland bill.

Bill treated as promissory note.

SEC. 1529. BILL TREATED AS PROMISSORY NOTE.—Where in a bill drawer and drawee are the same person, or where the drawee is a fictitious person, or a person not having capacity to contract, the holder may treat the instrument, at his option, either as a bill of exchange or a promissory note.

Referee in case of need.

SEC. 1530. REFEREE IN CASE OF NEED.—The drawer of a bill and any indorser may insert thereon the name of a person to whom the holder may resort in case of need; that is to say in case the bill is dishonored by nonacceptance or nonpayment. Such person is called the referee in case of need. It is in the option of the holder to resort to the referee in case of need or not as he may see fit.

ACCEPTANCE

Acceptance.

SEC. 1531. ACCEPTANCE.—The acceptance of a bill is the signification by the drawee of his assent to the order of the drawer. The acceptance must be in writing and signed by the drawee. It must not express that the drawee will perform his promise by any other means than the payment of money.

Holder entitled to acceptance on face of bill.

SEC. 1532. HOLDER ENTITLED TO ACCEPTANCE ON FACE OF BILL.—The holder of a bill presenting the same for acceptance may require that the acceptance be written on the bill and, if such request is refused, may treat the bill as dishonored.

Acceptance by separate instrument.

SEC. 1533. ACCEPTANCE BY SEPARATE INSTRUMENT.—Where an acceptance is written on a paper other than the bill itself, it does not bind the acceptor except in favor of a person to whom it is shown and who, on the faith thereof, receives the bill for value.

Promise to accept.

SEC. 1534. PROMISE TO ACCEPT.—An unconditional promise in writing to accept a bill before it is drawn is deemed an actual acceptance in favor of every person who, upon the faith thereof, receives the bill for value.

Time allowed drawee to accept.

SEC. 1535. TIME ALLOWED DRAWEE TO ACCEPT.—The drawee is allowed twenty-four hours after presentment in which to decide whether or not he will accept the bill; but the acceptance, if given, dates as of the day of presentation.

Liability of drawee retaining or destroying bill.

SEC. 1536. LIABILITY OF DRAWEE RETAINING OR DESTROYING BILL.—Where a drawee to whom a bill is delivered for acceptance destroys the same, or refuses within twenty-four hours after such delivery, or within such other period as the holder may allow, to return the bill accepted or nonaccepted to the holder, he will be deemed to have accepted the same.

Acceptance of incomplete bill.

SEC. 1537. ACCEPTANCE OF INCOMPLETE BILL.—A bill may be accepted before it has been signed by the drawer, or while otherwise incomplete, or when it is overdue, or after it has been dishonored by a previous refusal to accept, or by nonpayment. But when a bill payable after sight is dishonored by nonacceptance and the drawee subsequently accepts it, the holder in the absence of any different agreement, is entitled to have the bill accepted as of the date of the first presentment.

Kinds of acceptance.

SEC. 1538. KINDS OF ACCEPTANCE.—An acceptance is either general or qualified. A general acceptance assents without qualification to the order of the drawer. A qualified acceptance in express terms varies the effect of the bill as drawn.

SEC. 1539. KINDS OF ACCEPTANCE.—An acceptance to pay at a particular place is a general acceptance, unless it expressly states that the bill is to be paid there only and not elsewhere.

Qualified acceptance.

SEC. 1540. QUALIFIED ACCEPTANCE.—An acceptance is qualified which is—

(1) Conditional; that is to say, which makes payment by the acceptor dependent on the fulfillment of a condition therein stated;

(2) Partial; that is to say, an acceptance to pay part only of the amount for which the bill is drawn;

(3) Local; that is to say, an acceptance to pay only at a particular place;

(4) Qualified as to time;

(5) The acceptance of some one or more of the drawees, but not of all.

Rights of parties.

SEC. 1541. RIGHTS OF PARTIES AS TO QUALIFIED ACCEPTANCES.—The holder may refuse to take a qualified acceptance, and if he does not obtain an unqualified acceptance he may treat the bill as dishonored by nonacceptance. Where a qualified acceptance is taken the drawer and indorsers are discharged from liability on the bill, unless they have expressly or impliedly authorized the holder to take a qualified acceptance, or subsequently assent thereto. When the drawer or an indorser receives notice of a qualified acceptance, he must, within a reasonable time, express his dissent to the holder, or he will be deemed to have assented thereto.

PRESENTMENT FOR ACCEPTANCE

When presentment must be made.

SEC. 1542. WHEN PRESENTMENT FOR ACCEPTANCE MUST BE MADE.—Presentment for acceptance must be made—

(1) Where the bill is payable after sight, or in any other case, where presentment for acceptance is necessary in order to fix the maturity of the instrument; or

(2) Where the bill expressly stipulates that it shall be presented for acceptance; or

(3) Where the bill is drawn payable elsewhere than at the residence or place of business of the drawee.

In no other case is presentment for acceptance necessary in order to render any party to the bill liable.

CROSS REFERENCE

Post, p. 1325.

Presentment, when excused, see section 1547.

Time for.

SEC. 1543. TIME FOR PRESENTMENT.—Except as herein otherwise provided, the holder of a bill which is required by section 1542 to be presented for acceptance must either present it for acceptance or negotiate it within a reasonable time. If he fails to do so, the drawer and all indorsers are discharged.

To whom must be made.

SEC. 1544. TO WHOM PRESENTMENT FOR ACCEPTANCE MUST BE MADE.—Presentment for acceptance must be made by or on behalf of the holder at a reasonable hour, on a business day and before the bill is overdue, to the drawee or some person, authorized to accept or refuse acceptance on his behalf; and—

(1) Where a bill is addressed to two or more drawees who are not partners, presentment must be made to them all, unless one has authority to accept or refuse acceptance for all, in which case presentment may be made to him only;

(2) Where the drawee is dead, presentment may be made to his personal representative;

(3) Where the drawee has been adjudged a bankrupt or an insolvent or has made an assignment for the benefit of creditors, presentment may be made to him or to his trustee or assignee.

Bill of exchange.

SEC. 1545. PRESENTMENT OF BILL OF EXCHANGE.—A bill may be presented for acceptance on any day on which negotiable instruments may be presented for payment under the provisions of sections 1471 and 1484. When Saturday is not otherwise a holiday, presentment for acceptance may be made before twelve o'clock noon, on that day.

Post, pp. 1327, 1328.

Where time is insufficient.

SEC. 1546. PRESENTMENT WHERE TIME IS INSUFFICIENT.—Where the holder of a bill drawn payable elsewhere than at the place of business or the residence of the drawee has not time with the exercise of reasonable diligence to present the bill for acceptance before presenting it for payment on the day that it falls due, the delay caused by presenting the bill for acceptance before presenting it for payment is excused and does not discharge the drawers and indorsers.

When excused.

SEC. 1547. WHEN PRESENTMENT IS EXCUSED.—Presentment for acceptance is excused and a bill may be treated as dishonored by nonacceptance, in either of the following cases:

(1) Where the drawee is dead, or has absconded, or is a fictitious person, or a person not having capacity to contract by bill;

(2) Where, after the exercise of reasonable diligence, presentment can not be made;

(3) Where, although presentment has been irregular, acceptance has been refused on some other ground.

Bill dishonored by nonacceptance.

SEC. 1548. BILL DISHONORED BY NONACCEPTANCE.—A bill is dishonored by nonacceptance—

(1) When it is duly presented for acceptance and such an acceptance as is prescribed by chapters 66 to 69 of this code is refused or can not be obtained; or

Ante, p. 1307; *post*, p. 1329.

(2) When presentment for acceptance is excused and the bill is not accepted.

Duty of holder.

SEC. 1549. DUTY OF HOLDER WHERE NOT ACCEPTED.—Where a bill is duly presented for acceptance and is not accepted within the prescribed time the person presenting it must treat the bill as dishonored by nonacceptance or he loses the right of recourse against the drawer and indorsers.

Rights of holder where bill not accepted.

SEC. 1550. RIGHTS OF HOLDER WHERE BILL NOT ACCEPTED.—When a bill is dishonored by nonacceptance, an immediate right of recourse against the drawers and indorsers accrues to the holder and no presentment for payment is necessary.

Protest.

PROTEST

When necessary.

SEC. 1551. IN WHAT CASES PROTEST NECESSARY.—Where a foreign bill appearing on its face to be such is dishonored by nonacceptance, it must be duly protested for nonacceptance, and where such a bill which has not previously been dishonored by nonacceptance is dishonored by nonpayment, it must be duly protested for nonpayment. If it is not so protested, the drawer and indorsers are discharged. Where a bill does not appear on its face to be a foreign bill, protest thereof in case of dishonor is unnecessary.

How made.

SEC. 1552. HOW MADE.—The protest must be annexed to the bill, or must contain a copy thereof, and must be under the hand and seal of the notary making it, and must specify—

(1) The time and place of presentment;

(2) The fact that presentment was made and the manner thereof;

(3) The cause or reason for protesting the bill;

(4) The demand made and the answer given, if any, or the fact that the drawee or acceptor could not be found.

By whom.

SEC. 1553. BY WHOM MADE.—Protest may be made by—

(1) A notary public; or

(2) By any respectable resident of the place where the bill is dishonored, in the presence of two or more credible witnesses.

When.

SEC. 1554. WHEN MADE.—When a bill is protested, such protest must be made on the day of its dishonor, unless delay is excused as herein provided. When a bill has been duly noted, the protest may be subsequently extended as of the date of the noting.

Where.

SEC. 1555. WHERE MADE.—A bill must be protested at the place where it is dishonored, except that when a bill drawn payable at the place of business, or residence of some person other than the drawee, has been dishonored by nonacceptance, it must be protested for nonpayment at the place where it is expressed to be payable, and no further presentment for payment to, or demand on, the drawee is necessary.

Protest both for nonacceptance and nonpayment.

SEC. 1556. PROTEST BOTH FOR NONACCEPTANCE AND NONPAYMENT.—A bill which has been protested for nonacceptance may be subsequently protested for nonpayment.

Before maturity.

SEC. 1557. PROTEST BEFORE MATURITY.—Where the acceptor has been adjudged a bankrupt or an insolvent, or has made an assignment for the benefit of creditors, before the bill matures, the holder may cause the bill to be protested for better security against the drawer and indorsers.

When dispensed with.

SEC. 1558. WHEN DISPENSED WITH.—Protest is dispensed with by any circumstances which would dispense with notice of dishonor. Delay in noting or protesting is excused when delay is caused by circumstances beyond the control of the holder and not imputable to his default, misconduct or negligence. When the cause of delay ceases to operate, the bill must be noted or protested with reasonable diligence.

Lost, etc., bills.

SEC. 1559. WHEN BILL IS LOST AND SO FORTH.—When a bill is lost or destroyed or is wrongly detained from the person entitled to hold it, protest may be made on a copy or written particulars thereof.

ACCEPTANCE FOR HONOR

Acceptance for honor.

SEC. 1560. ACCEPTANCE FOR HONOR.—Where a bill of exchange has been protested for dishonor by nonacceptance or protested for better security, and is not overdue, any person not being a party already liable thereon may, with the consent of the holder, intervene and accept the bill supra protest for the honor of any party liable thereon, or for the honor of the person for whose account the bill is drawn. The acceptance for honor may be for the part only of the sum for which the bill is drawn; and where there has been an acceptance for honor for one party, there may be a further acceptance by a different person for the honor of another party.

How made.

SEC. 1561. HOW MADE.—An acceptance for honor supra protest must be in writing, and indicate that it is an acceptance for honor, and must be signed by the acceptor for honor.

What deemed to be an acceptance for honor of the drawer.

SEC. 1562. WHAT DEEMED TO BE AN ACCEPTANCE FOR HONOR OF THE DRAWER.—Where an acceptance for honor does not expressly state for whose honor it is made, it is deemed to be an acceptance for the honor of the drawer.

Liability of acceptor.

SEC. 1563. LIABILITY OF ACCEPTOR.—The acceptor for honor is liable to the holder and to all parties to the bill subsequent to the party for whose honor he has accepted.

Agreement of acceptor for honor.

SEC. 1564. AGREEMENT OF ACCEPTOR FOR HONOR.—The acceptor for honor by such acceptance engages that he will on due presentment pay the bill according to the terms of his acceptance; provided, it

shall not have been paid by the drawee; and provided, also, that it shall have been duly presented for payment and protested for nonpayment and notice of dishonor given him.

Bill payable after sight.

SEC. 1565. BILL PAYABLE AFTER SIGHT.—Where a bill payable after sight is accepted for honor, its maturity is calculated from the date of the noting for nonacceptance and not from the date of the acceptance for honor.

Protest.

SEC. 1566. PROTEST.—Where a dishonored bill has been accepted for honor supra protest or contains a reference in case of need, it must be protested for nonpayment before it is presented for payment to the acceptor for honor or referee in case of need.

Presentment to acceptor.

SEC. 1567. PRESENTMENT TO ACCEPTOR.—Presentment for payment to the acceptor for honor must be made as follows:

(1) If it is to be presented in the place where the protest for nonpayment was made, it must be presented not later than the day following its maturity.

(2) If it is to be presented in some other place than the place where it was protested, then it must be forwarded within the time specified in section 1503. *Ante*, p. 1319.

Delay in presentment. *Ante*, p. 1317.

SEC. 1568. DELAY IN PRESENTMENT.—The provisions of section 1480 apply where there is delay in making presentment to the acceptor for honor or referee in case of need.

Dishonor of bill by acceptor for honor.

SEC. 1569. DISHONOR OF BILL BY ACCEPTOR FOR HONOR.—When the bill is dishonored by the acceptor for honor it must be protested for nonpayment by him.

PAYMENT FOR HONOR

Payment for honor.

SEC. 1570. PAYMENT FOR HONOR.—Where a bill has been protested for nonpayment, any person may intervene and pay it supra protest for the honor of any person liable thereon or for the honor of the person for whose account it was drawn.

How made.

SEC. 1571. PAYMENT FOR HONOR, HOW MADE.—The payment for honor supra protest in order to operate as such and not as a mere voluntary payment must be attested by a notarial act of honor which may be appended to the protest or form an extension to it.

Declaration.

SEC. 1572. DECLARATION.—The notarial act of honor must be founded on a declaration made by the payer for honor or by his agent in that behalf declaring his intention to pay the bill for honor and for whose honor he pays.

Preference of parties.

SEC. 1573. PREFERENCE OF PARTIES.—Where two or more persons offer to pay a bill for the honor of different parties, the person whose payment will discharge most parties to the bill is to be given the preference.

Subsequent parties discharged.

SEC. 1574. SUBSEQUENT PARTIES DISCHARGED.—Where a bill has been paid for honor, all parties subsequent to the party for whose honor it is paid are discharged, but the payer for honor is subrogated for, and succeeds to, both the rights and duties of the holder as regards the party for whose honor he pays and all parties liable to the latter.

Right of recourse lost.

SEC. 1575. RIGHT OF RECOURSE LOST.—Where the holder of a bill refuses to receive payment supra protest, he loses his right of recourse against any party who would have been discharged by such payment.

Right of payee for honor.

SEC. 1576. RIGHT OF PAYER FOR HONOR.—The payer for honor, on paying to the holder the amount of the bill and the notarial expenses incidental to its dishonor, is entitled to receive both the bill itself and the protest.

Bills in a set.

BILLS IN A SET

Constitutes one bill.

SEC. 1577. BILLS IN SETS ONE BILL.—Where a bill is drawn in a set, each part of the set being numbered and containing a reference to the other parts, the whole of the parts constitutes one bill.

Where different parts are negotiated.

SEC. 1578. WHERE DIFFERENT PARTS ARE NEGOTIATED.—Where two or more parts of a set are negotiated to different holders in due course, the holder whose title first accrues is, as between such holders, the true owner of the bill. But nothing in this section affects the rights of a person who in due course accepts or pays the part first presented to him.

Liability of holder.

SEC. 1579. LIABILITY OF HOLDER.—Where the holder of a set indorses two or more parts to different persons he is liable on every such part, and every indorser subsequent to him is liable on the part he has himself indorsed, as if such parts were separate bills.

Acceptance.

SEC. 1580. ACCEPTANCE.—The acceptance may be written on any part and it must be written on one part only. If the drawee accepts more than one part, and such accepted parts are negotiated to different holders in due course, he is liable on every such part as if it were a separate bill.

Payment by acceptor.

SEC. 1581. PAYMENT BY ACCEPTOR.—When the acceptor of a bill drawn in a set pays it without requiring the part being his acceptance to be delivered up to him, and that part at maturity is outstanding in the hands of a holder in due course, he is liable to the holder thereon.

Whole bill discharged.

SEC. 1582. WHOLE BILL DISCHARGED.—Except as herein otherwise provided, where any one part of a bill drawn in a set is discharged by payment or otherwise the whole bill is discharged.

PROMISSORY NOTES AND CHECKS.

CHAPTER 68.—PROMISSORY NOTES AND CHECKS

Ante, p. 1307; *post*, p. 1329.

NOTE.—Chapters 66 to 69 of this code comprise the Uniform Negotiable Instruments Act.

Definitions. Promissory note.

SEC. 1583. PROMISSORY NOTE DEFINED.—A negotiable promissory note within the meaning of chapters 66 to 69 of this code is an unconditional promise in writing made by one person to another, signed by the maker, engaging to pay on demand, or at a fixed or determinable future time, a sum certain in money to order or to bearer, but the negotiability of a promissory note otherwise negotiable in form, secured by a mortgage or deed of trust upon real or personal property, shall not be affected or abridged by reason of a statement therein that it is so secured, nor by reason of the fact that said instrument is so secured, nor by any conditions contained in the mortgage or deed of trust securing the same. Where a note is drawn to the maker's own order it is not complete until indorsed by him.

Check.

SEC. 1584. CHECK DEFINED.—A check is a bill of exchange drawn on a bank payable on demand. Except as herein otherwise provided, the provisions of chapters 66 to 69 of this code applicable to a bill of exchange payable on demand apply to a check.

Time for presenting.

SEC. 1585. TIME FOR PRESENTING CHECK.—A check must be presented for payment within a reasonable time after its issue or the drawer will be discharged from liability thereon to the extent of the loss caused by the delay.

Certified check.

SEC. 1586. CERTIFIED CHECK.—Where a check is certified by the bank on which it is drawn, the certification is equivalent to an acceptance.

SEC. 1587. EFFECT OF ACCEPTANCE OR CERTIFICATION.—Where the holder of a check procures it to be accepted or certified the drawer and all indorsers are discharged from liability thereon. Effect of acceptance or certification.

SEC. 1588. WHEN CHECK OPERATES AS ASSIGNMENT.—A check of itself does not operate as an assignment of any part of the funds to the credit of the drawer with the bank, and the bank is not liable to the holder, unless and until it accepts or certifies the check. When check operates as assignment.

CHAPTER 69.—GENERAL PROVISIONS RESPECTING NEGOTIABLE INSTRUMENTS

GENERAL PROVISIONS RESPECTING NEGOTIABLE INSTRUMENTS.

NOTE.—Chapters 66 to 69 of this code comprise the Uniform Negotiable Instruments Act. *Ante*, pp. 1307–1329.

SEC. 1589. DEFINITIONS.—In chapters 66 to 69 of this code, unless the context other requires— Definitions.

"Acceptance" means an acceptance completed by delivery or notification.

"Action" includes counterclaim and set-off.

"Bank" includes any person or association of persons carrying on the business of banking, whether incorporated or not.

"Bearer" means the person in possession of a bill or note which is payable to bearer.

"Bill" means bill of exchange, and "note" means negotiable promissory note.

"Delivery" means transfer of possession, actual or constructive, from one person to another.

"Holder" means the payee or indorsee of a bill or note, who is in possession of it, or the bearer thereof.

"Indorsement" means an indorsement completed by delivery.

"Instrument" means negotiable instrument.

"Issue" means the first delivery of the instrument complete in form, to a person who takes it as a holder.

"Person" includes a body of persons, whether incorporated or not.

"Value" means valuable consideration.

"Written" includes printed; and "writing" includes print.

SEC. 1590. PERSON PRIMARILY LIABLE ON INSTRUMENT.—The person "primarily" liable on an instrument is the person who by the terms of the instrument is absolutely required to pay the same. All other parties are "secondarily" liable. Person primarily liable on instrument.

SEC. 1591. REASONABLE TIME, WHAT CONSTITUTES.—In determining what is a "reasonable time" or an "unreasonable time," regard is to be had to the nature of the instrument, the usage of trade or business (if any) with respect to such instruments, and the facts of the particular case. Reasonable time.

SEC. 1592. TIME, HOW COMPUTED WHEN LAST DAY FALLS ON HOLIDAY.—Where the day, or the last day, for doing any act herein required or permitted to be done falls on Sunday or on a holiday, the act may be done on the next succeeding secular or business day. Time computation, last day falling on holiday.

SEC. 1593. APPLICATION OF CHAPTERS 66 TO 69.—The provisions of chapters 66 to 69 of this code do not apply to negotiable instruments made and delivered prior to the taking effect hereof. In any case not provided for in said chapters the rules of the law merchant shall govern. Application of Chapters 66 to 69. *Ante*, pp. 1307–1329.

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GENERAL PROVISIONS AFFECTING CHAPTERS 34 TO 69.

CHAPTER 70.—GENERAL PROVISIONS AFFECTING CHAPTERS 34 TO 69

Parties may waive certain provisions of Code.
Ante, pp. 1204–1329.

SEC. 1594. PARTIES MAY WAIVE PROVISIONS OF CODE.—Except where it is otherwise declared, the provisions of chapters 34 to 69 of this code, in respect to the rights and obligations of parties to contracts, are subordinate to the intention of the parties, when ascertained in the manner prescribed by the chapter on the interpretation of contracts; and the benefit thereof may be waived by any party entitled thereto, unless such waiver would be against public policy.

CROSS REFERENCE

Post, p. 1197. Interpretation of contracts, see sections 546 et seq.

RELIEF IN GENERAL.

CHAPTER 71.—RELIEF IN GENERAL

Species of.

SEC. 1595. SPECIES OF RELIEF.—As a general rule compensation is a relief or remedy provided by the law of the Canal Zone for the violation of private rights, and the means of securing their observance; and specific and preventive relief may be given in no other cases than those specified in this chapter and chapters 72 and 73 of this code.

CROSS REFERENCES

Post, p. 1338. Injunction, see sections 1652 et seq.

Person suffering detriment may recover damages, see section 1597.

Post, p. 1335. Specific performance, see sections 1634 et seq.

In case of forfeiture.

SEC. 1596. RELIEF IN CASE OF FORFEITURE.—Whenever, by the terms of an obligation, a party thereto incurs a forfeiture, or a loss in the nature of a forfeiture, by reason of his failure to comply with its provisions, he may be relieved therefrom, upon making full compensation to the other party, except in case of a grossly negligent, willful, or fraudulent breach of duty.

COMPENSATORY RELIEF.

CHAPTER 72.—COMPENSATORY RELIEF

DAMAGES IN GENERAL

GENERAL PRINCIPLES

Who may recover.

SEC. 1597. PERSON SUFFERING DETRIMENT MAY RECOVER DAMAGES.—Every person who suffers detriment from the unlawful act or omission of another, may recover from the person in fault a compensation therefor in money, which is called damages.

CROSS REFERENCES

Post, p. 1334. Damages are exclusive of exemplary damages and interest, except where those are expressly mentioned, see section 1624.

Post, p. 1332. Damages for breach of contract, see sections 1605 et seq.

Post, p. 1333. Damages for torts, see sections 1615 et seq.

Post, p. 1334. Damages must be reasonable, see section 1626.

Post, p. 1331. Exemplary damages, see section 1604.

Post, p. 1331. Interest on damages, see sections 1600 and 1601.

Post, p. 1334. Limitation on amount of damages, see section 1625.

Post, p. 1334. Nominal damages, see section 1627.

"Detriment," defined.

SEC. 1598. DETRIMENT, WHAT.—Detriment is a loss or harm suffered in person or property.

Injuries resulting or probable after suit brought.

SEC. 1599. INJURIES RESULTING OR PROBABLE AFTER SUIT BROUGHT.—Damages may be awarded, in a judicial proceeding, for detriment resulting after the commencement thereof or certain to result in the future.

Interest as damages.

INTEREST AS DAMAGES

Recovery of.

SEC. 1600. PERSON ENTITLED TO RECOVER DAMAGES MAY RECOVER INTEREST THEREON.—Every person who is entitled to recover damages certain, or capable of being made certain by calculation, and the right to recover which is vested in him upon a particular day, is entitled also to recover interest thereon from that day, except during such time as the debtor is prevented by law, or by the act of the creditor, from paying the debt.

CROSS REFERENCES

Damages prescribed in code are exclusive of interest, see section 1624. *Post*, p. 1334.
Interest as damages, see section 666. *Ante*, p. 1220.
Interest as damages on breach of contract, see section 1607. *Post*, p. 1332.
Interest in actions for conversion, see section 1616. *Post*, p. 1333.

Actions other than contract.

SEC. 1601. IN ACTIONS OTHER THAN CONTRACT.—In an action for the breach of an obligation not arising from contract, and in every case of oppression, fraud, or malice, interest may be given, in the discretion of the court or jury.

CROSS REFERENCE

Interest in trover and conversion, see section 1616. *Post*, p. 1333.

Limit of rate by contract.

SEC. 1602. LIMIT OF RATE BY CONTRACT.—Any legal rate of interest stipulated by a contract remains chargeable after a breach thereof, as before, until the contract is superseded by a judgment or other new obligation.

Acceptance of principal waives claim to interest.

SEC. 1603. ACCEPTANCE OF PRINCIPAL WAIVES CLAIM TO INTEREST.—Accepting payment of the whole principal, as such, waives all claim to interest.

Exemplary damages.

EXEMPLARY DAMAGES

When allowed.

SEC. 1604. EXEMPLARY DAMAGES, IN WHAT CASES ALLOWED.—In an action for the breach of an obligation not arising from contract, where the defendant has been guilty of oppression, fraud, or malice, express or implied, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.

CROSS REFERENCES

Damages for wrongs, generally, see sections 1615 et seq. *Post*, p. 1333.
Damages prescribed in code exclusive of exemplary damages, see section 1624. *Post*, p. 1334.
Infants and insane persons, liability for exemplary damages, see section 27. *Ante*, p. 1126
Injuries to animals, exemplary damages for, see section 1620. *Post*, p. 1333.

MEASURE OF DAMAGES

DAMAGES FOR BREACH OF CONTRACT

CROSS REFERENCES

Breach of warranty, see section 665. *Ante*, p. 1219.
Measure of damages for breach of contracts to sell and sales of personal property, see sections 597 to 673. *Ante*, p. 1204.

Measure of damages, breach of contract.

SEC. 1605. MEASURE OF DAMAGES FOR BREACH OF CONTRACT.—For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.

CROSS REFERENCES

Ante, p. 1201. Contract fixing damages for breach in advance, effect of, see section 575.
Post, p. 1334. Damages limited to amount one would gain by performance, see section 1625.
Post, p. 1334. Damages to be reasonable, see section 1626.
Post, p. 1334. Nominal damages, see section 1627.

Damages must be certain.

SEC. 1606. DAMAGES MUST BE CERTAIN.—No damages can be recovered for a breach of contract which are not clearly ascertainable in both their nature and origin.

Breach of contract to pay liquidated sum.

SEC. 1607. BREACH OF CONTRACT TO PAY LIQUIDATED SUM.—The detriment caused by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the obligation, with interest thereon.

Breach of carrier's obligation to receive goods, etc.

SEC. 1609. BREACH OF CARRIER'S OBLIGATION TO RECEIVE GOODS, AND SO FORTH.—The detriment caused by the breach of a carrier's obligation to accept freight, messages, or passengers, is deemed to be the difference between the amount which he had a right to charge for the carriage and the amount which it would be necessary to pay for the same service when it ought to be performed.

CROSS REFERENCE

Ante, p. 1255. Obligation to receive freight, see section 957.

To deliver.

SEC. 1610. BREACH OF CARRIER'S OBLIGATION TO DELIVER.—The detriment caused by the breach of a carrier's obligation to deliver freight, where he has not converted it to his own use, is deemed to be the value thereof at the place and on the day at which it should have been delivered, deducting the freightage to which he would have been entitled if he had completed the delivery.

CROSS REFERENCES

Ante, p. 1254. Delivery of property by carrier, see section 900.
Ante, p. 1216. Stoppage in transitu, see sections 653 et seq.

Carrier's delay.

SEC. 1611. CARRIER'S DELAY.—The detriment caused by a carrier's delay in the delivery of freight, is deemed to be the depreciation in the intrinsic value of the freight during the delay, and also the depreciation, if any, in the market value thereof, otherwise than by reason of a depreciation in its intrinsic value, at the place where it ought to have been delivered, and between the day at which it ought to have been delivered, and the day of its actual delivery.

CROSS REFERENCES

Ante, p. 1257. Carrier's liability for delay, see section 977.
Ante, pp. 1253, 1257. Delay in carriage, liability for, see sections 895 and 977.

Breach of warranty of authority.

SEC. 1612. BREACH OF WARRANTY OF AUTHORITY.—The detriment caused by the breach of a warranty of an agent's authority, is deemed to be the amount which could have been recovered and collected from his principal if the warranty had been complied with, and the reasonable expenses of legal proceedings taken, in good faith, to enforce the act of the agent against his principal.

CROSS REFERENCE

Warranty of authority by one assuming to act as agent, see section 1073. *Ante*, p. 1268.

Breach of promise of marriage.

SEC. 1613. BREACH OF PROMISE OF MARRIAGE.—The damages for the breach of a promise of marriage rest in the sound discretion of the court or jury.

Liability for nonpayment of check.

SEC. 1614. LIABILITY FOR NONPAYMENT OF CHECK.—No bank shall be liable to a depositor because of the nonpayment through mistake or error, and without malice, of a check which should have been paid unless the depositor shall allege and prove actual damage by reason of such nonpayment and in such event the liability shall not exceed the amount of damage so proved.

DAMAGES FOR WRONGS

Damages for wrongs.

Breach of obligation other than contract.

SEC. 1615. BREACH OF OBLIGATION OTHER THAN CONTRACT.—For the breach of an obligation not arising from contract the measure of damages, except where otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.

CROSS REFERENCE

Diminution of damages in proportion to want of care of persons injured, see section 595. *Ante*, p. 1203.

Conversion of personal property.

SEC. 1616. CONVERSION OF PERSONAL PROPERTY.—The detriment caused by the wrongful conversion of personal property is presumed to be:

First. The value of the property at the time of the conversion, with the interest from that time, or where the action has been prosecuted with reasonable diligence, the highest market value of the property at any time between the conversion and the judgment, without interest, at the option of the injured party; and

Second. A fair compensation for the time and money properly expended in pursuit of the property.

Presumption of detriment.

SEC. 1617. SAME.—The presumption declared by section 1616 can not be repelled in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Damages of lienor.

SEC. 1618. DAMAGES OF LIENOR.—One having a mere lien on personal property, can not recover greater damages for its conversion, from one having a right thereto superior to his, after his lien is discharged, than the amount secured by the lien, and the compensation allowed by section 1616 for loss of time and expenses.

CROSS REFERENCES

Damages for conversion of personalty, generally, see section 1616.
Levy on mortgaged chattel, see section 1362. *Ante*, p. 1303.

Seduction.

SEC. 1619. SEDUCTION.—The damages for seduction rest in the sound discretion of the court or jury.

Injuries to animals.

SEC. 1620. INJURIES TO ANIMALS.—For wrongful injuries to animals being subjects of property, committed willfully or by gross negligence, in disregard of humanity, exemplary damages may be given.

CROSS REFERENCE

Exemplary damages, generally, see section 1604. *Ante*, p. 1331.

General provisions.

GENERAL PROVISIONS

Property of peculiar value.

SEC. 1622. PROPERTY OF PECULIAR VALUE.—Where certain property has a peculiar value to a person recovering damages for deprivation thereof, or injury thereto, that may be deemed to be its value against one who had notice thereof before incurring a liability to damages in respect thereof, or against a willful wrongdoer.

Value of thing in action.

SEC. 1623. VALUE OF THING IN ACTION.—For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

Damages allowed in this subchapter, exclusive of others.
Ante, p. 1332.

SEC. 1624. DAMAGES ALLOWED IN THIS SUBCHAPTER, EXCLUSIVE OF OTHERS.—The damages prescribed by sections 1605 to 1627 are exclusive of exemplary damages and interest, except where those are expressly mentioned.

CROSS REFERENCES

Ante, p. 1331. Exemplary damages, see section 1604.

Ante, pp. 1220, 1331. Interest, see sections 666 and 1600 to 1603.

Limitation of damages.
Ante, p. 1332.

SEC. 1625. LIMITATION OF DAMAGES.—Notwithstanding the provisions of sections 1605 to 1627, no person can recover a greater amount in damages for the breach of an obligation than he could have gained by the full performance thereof on both sides, except in the cases specified in section 1604 on exemplary damages and in sections 1613, 1619, and 1620.

Ante, p. 1333.

CROSS REFERENCE

Ante, p. 1331. Exemplary damages, see section 1604.

To be reasonable.

SEC. 1626. DAMAGES TO BE REASONABLE.—Damages must, in all cases, be reasonable, and where an obligation of any kind appears to create a right to unconscionable and grossly oppressive damages, contrary to substantial justice, no more than reasonable damages can be recovered.

CROSS REFERENCE

Ante, p. 1201. Liquidated damages and penalty, see sections 574 and 575.

Nominal damages.

SEC. 1627. NOMINAL DAMAGES.—When a breach of duty has caused no appreciable detriment to the party affected, he may yet recover nominal damages.

SPECIFIC AND PREVENTIVE RELIEF.

CHAPTER 73.—SPECIFIC AND PREVENTIVE RELIEF

General principles.

GENERAL PRINCIPLES

Specific relief, when allowed.

SEC. 1628. SPECIFIC RELIEF, AND SO FORTH, WHEN ALLOWED.—Specific or preventive relief may be given as provided by the laws of the Canal Zone.

CROSS REFERENCES

Post, p. 1337. Cancellation of instruments, see sections 1648 et seq.

Post, p. 1338. Injunctions, see sections 1652 et seq.

Post, p. 1335. Possession of personal property, see sections 1632 et seq.

Ante, p. 1201; *post*, p. 1337. Rescission of contracts, see sections 580 et seq. and 1645 et seq.

Post, p. 1336. Revision of contracts, see sections 1641 et seq.

Post, p. 1335. Specific performance of obligation, see sections 1634 et seq.

How given.

SEC. 1629. SPECIFIC RELIEF, HOW GIVEN.—Specific relief is given—

1. By taking possession of a thing and delivering it to a claimant;

2. By compelling a party himself to do that which ought to be done; or

3. By declaring and determining the rights of parties, otherwise than by an award of damages.

Preventive relief, how given.

SEC. 1630. PREVENTIVE RELIEF, HOW GIVEN.—Preventive relief is given by prohibiting a party from doing that which ought not to be done.

CROSS REFERENCE

Preventive relief, generally, see sections 1652 et seq. *Post*, p. 1338.

Not granted to enforce penalty, etc.

SEC. 1631. NOT TO ENFORCE PENALTY, AND SO FORTH.—Neither specific nor preventive relief can be granted to enforce a penal law, except in a case of nuisance, nor to enforce a penalty or forfeiture in any case.

Specific relief.

SPECIFIC RELIEF

Possession of personal property.

POSSESSION OF PERSONAL PROPERTY

Judgment for delivery.

SEC. 1632. JUDGMENT FOR DELIVERY.—A person entitled to the immediate possession of specific personal property may recover the same in the manner provided by the Code of Civil Procedure.

Specific delivery.

SEC. 1633. SPECIFIC DELIVERY.—Any person having the possession or control of a particular article of personal property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession.

Specific performance of obligations.

SPECIFIC PERFORMANCE OF OBLIGATIONS

CROSS REFERENCE

Specific performance of contract to deliver specific or ascertained goods, see section 664. *Ante*, p. 1219.

When granted.

SEC. 1634. SPECIFIC PERFORMANCE.—Except as otherwise provided in sections 1635 to 1640, the specific performance of an obligation may be compelled.

CROSS REFERENCES

Specifically enforcing revised contract, see section 1644. *Post*, p. 1337.
Specific performance, see sections 1638 and 1640. *Post*, p. 1336.

Mutuality of remedy.

SEC. 1635. NO REMEDY UNLESS MUTUAL.—Neither party to an obligation can be compelled specifically to perform it, unless the other party thereto has performed, or is compellable specifically to perform, everything to which the former is entitled under the same obligation, either completely or nearly so, together with full compensation for any want of entire performance.

CROSS REFERENCE

Performance by parties seeking execution, compare with section 1640. *Post*, p. 1336.

Contract signed by one party only, may be enforced by other.

SEC. 1636. CONTRACT SIGNED BY ONE PARTY ONLY, MAY BE ENFORCED BY OTHER.—A party who has signed a written contract may be compelled specifically to perform it, though the other party has not signed it, if the latter has performed, or offers to perform it on his part, and the case is otherwise proper for enforcing specific performance.

Liquidation of damages not a bar to specific performance.

SEC. 1637. LIQUIDATION OF DAMAGES NOT A BAR TO SPECIFIC PERFORMANCE.—A contract otherwise proper to be specifically enforced, may be thus enforced, though a penalty is imposed, or the damages are liquidated for its breach, and the party in default is willing to pay the same.

Obligations not specifically enforceable.

SEC. 1638. WHAT CAN NOT BE SPECIFICALLY ENFORCED.—The following obligations can not be specifically enforced:

1. An obligation to render personal service;

2. An obligation to employ another in personal service;

3. An agreement to submit a controversy to arbitration;

4. An agreement to perform an act which the party has not power lawfully to perform when required to do so;

5. An agreement to procure the act or consent of the wife of the contracting party, or of any other third person; or

6. An agreement, the terms of which are not sufficiently certain to make the precise act which is to be done clearly ascertainable.

CROSS REFERENCE

What parties can not have specific performance, see section 1640.

What parties can not be compelled to perform.

SEC. 1639. WHAT PARTIES CAN NOT BE COMPELLED TO PERFORM.—Specific performance can not be enforced against a party to a contract in any of the following cases:

1. If he has not received an adequate consideration for the contract;

2. If it is not, as to him, just and reasonable;

3. If his assent was obtained by the misrepresentation, concealment, circumvention, or unfair practices of any party to whom performance would become due under the contract, or by any promise of such party which has not been substantially fulfilled; or

4. If his assent was given under the influence of mistake, misapprehension, or surprise, except that where the contract provides for compensation in case of mistake, a mistake within the scope of such provision may be compensated for, and the contract specifically enforced in other respects, if proper to be so enforced.

What parties can not have specific performance in their favor.

SEC. 1640. WHAT PARTIES CAN NOT HAVE SPECIFIC PERFORMANCE IN THEIR FAVOR.—Specific performance can not be enforced in favor of a party who has not fully and fairly performed all the conditions precedent on his part to the obligation of the other party, except where his failure to perform is only partial, and either entirely immaterial, or capable of being fully compensated, in which case specific performance may be compelled, upon full compensation being made for the default.

CROSS REFERENCE

What obligations can not be specifically enforced, see section 1638.

Revision of contracts.

REVISION OF CONTRACTS

What may be revised.

SEC. 1641. WHEN CONTRACT MAY BE REVISED.—When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

CROSS REFERENCES

Ante, p. 1198. Contract disregarded where not expressing intent through fraud or mistake, see section 551.

Post, p. 1337. Revised to express intention, see section 1643.

Presumption as to intent of parties.

SEC. 1642. PRESUMPTION AS TO INTENT OF PARTIES.—For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Principles of revision.

SEC. 1643. PRINCIPLES OF REVISION.—In revising a written instrument, the court may inquire what the instrument was intended to mean, and what were intended to be its legal consequences, and is not confined to the inquiry what the language of the instrument was intended to be.

Enforcement of revised contract.

SEC. 1644. ENFORCEMENT OF REVISED CONTRACT.—A contract may be first revised and then specifically enforced.

Rescission of contracts.

RESCISSION OF CONTRACTS

When rescission may be adjudged.

SEC. 1645. WHEN RESCISSION MAY BE ADJUDGED.—The rescission of a written contract may be adjudged, on the application of a party aggrieved:

1. In any of the cases mentioned in section 581; or

2. Where the contract is unlawful, for causes not apparent upon its face, and the parties were not equally in fault; or

3. When the public interest will be prejudiced by permitting it to stand.

CROSS REFERENCES

Cancellation of instruments, see sections 1648 et seq.

Rescission of contracts by party thereto, see section 581. *Ante*, p. 1201.

Rescission, how affected, see section 583. *Ante*, p. 1202.

Rescission for mistake.

SEC. 1646. RESCISSION FOR MISTAKE.—Rescission can not be adjudged for mere mistake, unless the party against whom it is adjudged can be restored to substantially the same position as if the contract had not been made.

CROSS REFERENCES

Mistake, see sections 506 et seq. *Ante*, p. 1193.

Placing party in statu quo, see section 583. *Ante*, p. 1202.

Court may require party rescinding to do equity.

SEC. 1647. COURT MAY REQUIRE PARTY RESCINDING TO DO EQUITY.—On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require.

Cancellation of instruments.

CANCELLATION OF INSTRUMENTS

When may be ordered.

SEC. 1648. WHEN CANCELLATION MAY BE ORDERED.—A written instrument, in respect to which there is a reasonable apprehension that if left outstanding it may cause serious injury to a person against whom it is void or voidable, may, upon his application, be so adjudged, and ordered to be delivered up or canceled.

CROSS REFERENCES

Cancellation and alteration of instruments by parties thereto, see sections 584 et seq. *Ante*, p. 1202.

Rescission of contracts, see sections 580 et seq. and 1645 et seq. *Ante*, p. 1201.

Instruments obviously void.

SEC. 1649. INSTRUMENTS OBVIOUSLY VOID.—An instrument, the invalidity of which is apparent upon its face or upon the face of another instrument which is necessary to the use of the former in evidence, is not to be deemed capable of causing injury, within the provisions of section 1648.

Cancellation in part.

SEC. 1650. CANCELLATION IN PART.—Where an instrument is evidence of different rights or obligations, it may be canceled in part, and allowed to stand for the residue.

Reissuance, etc., of lost private documents, etc.

SEC. 1651. REISSUANCE, AND SO FORTH, OF LOST PRIVATE DOCUMENTS OR INSTRUMENTS.—An action may be maintained by any person interested in any private document or instrument in writing, which has been lost, destroyed, or damaged by conflagration or other public calamity, to prove, establish, compel the reissuance, reexecution, and reacknowledgment of such document or instrument. If such document or instrument be a negotiable instrument, the court must compel the person in whose favor it is drawn to give a bond executed by himself and two sufficient sureties to indemnify the person reissuing, reexecuting, or reacknowledging the same against any lawful claim thereon.

Preventive relief.

PREVENTIVE RELIEF

How granted.

SEC. 1652. PREVENTIVE RELIEF, HOW GRANTED.—Preventive relief is granted by injunction, preliminary or final.

Injunctions regulated by Code Civil Procedure.

SEC. 1653. INJUNCTIONS REGULATED BY CODE CIVIL PROCEDURE.—Injunctions are regulated by the Code of Civil Procedure.

SPECIAL RELATIONS OF DEBTOR AND CREDITOR.

CHAPTER 74.—SPECIAL RELATIONS OF DEBTOR AND CREDITOR

General principles.

GENERAL PRINCIPLES

Who is a debtor.

SEC. 1654. WHO IS A DEBTOR.—A debtor, within the meaning of this chapter, is one who, by reason of an existing obligation, is or may become liable to pay money to another, whether such liability is certain or contingent.

Who is a creditor.

SEC. 1655. WHO IS A CREDITOR.—A creditor, within the meaning of this chapter, is one in whose favor an obligntion [1] exists, by reason of which he is, or may become, entitled to the payment of money.

Contracts of debtor are valid.

SEC. 1656. CONTRACTS OF DEBTOR ARE VALID.—In the absence of fraud, every contract of a debtor is valid against all his creditors, existing or subsequent, who have not acquired a lien on the property affected by such contract.

Payments in preference.

SEC. 1657. PAYMENTS IN PREFERENCE.—A debtor may pay one creditor in preference to another, or may give to one creditor security for the payment of his demand in preference to another.

CROSS REFERENCE

Post, p. 1341.

Preferring creditor, see section 1670 (1).

Relative rights of different creditors.

SEC. 1658. RELATIVE RIGHTS OF DIFFERENT CREDITORS.—Where a creditor is entitled to resort to each of several funds for the satisfaction of his claim, and another person has an interest in, or is entitled as a creditor to resort to some, but not all of them, the latter may require the former to seek satisfaction from those funds to which the latter has no such claim, so far as it can be done without impairing the right of the former to complete satisfaction, and without doing injustice to third persons.

CROSS REFERENCE

Ante, p. 1298.

Order of resort to different funds, see section 1325.

Fraudulent instruments and transfers.

FRAUDULENT INSTRUMENTS AND TRANSFERS

Transfers, etc., with intent to defraud creditors.

SEC. 1659. TRANSFERS, ETC., WITH INTENT TO DEFRAUD CREDITORS.—Every transfer of property or charge thereon made, every obligation incurred, and every judicial proceeding taken, with intent to delay or defraud any creditor or other person of his demands, is void against all ceditors [1] of the debtor, and their successors in interest,

[1] So in original.

and against any person upon whom the estate of the debtor devolves in trust for the benefit of others than the debtor.

Transfers presumed fraudulent.

SEC. 1660. TRANSFERS PRESUMED FRAUDULENT.—Every transfer of personal property, other than a thing in action, or a ship of cargo at sea or in a foreign port, and every lien thereon, other than a mortgage, when allowed by law, and a contract of bottomry or respondentia, is conclusively presumed if made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery, and followed by an actual and continued change of possession of the things transferred, to be fraudulent, and therefore void, against those who are his creditors while he remains in possession, and the successors in interest of such creditors, and against any persons on whom his estate devolves in trust for the benefit of others than himself, and against purchasers or encumbrancers in good faith subsequent to the transfer: *Provided, however*, That the provisions of this section shall not apply or extend to any sale, transfer, assignment, or mortgage made under the direction or order of a court of competent jurisdiction or by any executor, administrator, guardian, receiver, or other officer or person acting in the regular and proper discharge of official duty or in the discharge of any trust imposed upon him by law, nor to any transfer or assignment, statutory or otherwise, made for the benefit of creditors, generally, nor to any sale, transfer, assignment, or mortgage of any property exempt from execution.

Proviso.
When not applicable.

CROSS REFERENCE

Chattel mortgage, when void as to creditors and purchasers, see section 1356. *Ante*, p. 1302.

Creditor's right must be judicially ascertained.

SEC. 1661. CREDITOR'S RIGHT MUST BE JUDICIALLY ASCERTAINED.—A creditor can avoid the act or obligation of his debtor for fraud only where the fraud obstructs the enforcement, by legal process, of his right to take the property affected by the transfer or obligation.

ASSIGNMENTS FOR BENEFIT OF CREDITORS

Assignment for benefit of creditors.

When debtor may execute.

SEC. 1662. WHEN DEBTOR MAY EXECUTE ASSIGNMENT.—An insolvent debtor may in good faith execute an assignment of property in trust for the satisfaction of his creditors, in conformity to the provisions of this subchapter; subject, however, to the provisions of this code relative to trusts and fraudulent transfers, and to the restrictions imposed by law upon assignments by special partnerships, or by other specific classes or persons.

CROSS REFERENCE

Partner can not assign, see section 1103 (1). *Ante*, p. 1272.

Form of.

SEC. 1663. FORM OF ASSIGNMENT.—Every such assignment shall contain a list of the names of the creditors of the assignor, and their places of residence and amounts of their respective demands, and the amounts and nature of any security therefor; and shall, subject to the other provisions of this subchapter, be made to the marshal of the Canal Zone.

CROSS REFERENCE

Form of assignment, see section 1671. *Post*, p. 1341.

Custody of property.

SEC. 1664. CUSTODY OF PROPERTY; CREDITORS' MEETING AND NOTICE THEREOF; ELECTION OF ASSIGNEE.—The marshal shall forthwith take possession of all the property so assigned to him, and keep the same till delivered by him, as hereinafter provided. When the assignment has been made, as hereinbefore provided, the marshal shall

Creditors' meeting.

immediately, by mail, notify the creditors named in the assignment, at their places of residence as given therein, to meet at his office on a day and hour to be appointed by him, not less than eight or more than ten days from the date of the delivery of the assignment to him, for the purpose of electing one or more assignees, as they may determine, in the place and stead of the said marshal in the premises.

Notice.

He shall also publish a notice of such meeting, and the purpose thereof, at least once before such meeting, in some newspaper of general circulation in the Canal Zone. The notice so to be mailed shall also contain a statement of the amount of the demand of the creditor, and the amount and nature of any security therefor, as set forth in the assignment; and if any creditor shall not find the amount of his claim to be correctly so stated, he may file with said marshal, at or before such meeting, a statement, under oath, of his demand, and such statement shall, for the purpose of voting as hereinafter provided, be accepted by said marshal as correct; and when no such statement is filed, the statement of amount as set forth in the assignment shall be accepted by the marshal as correct.

No creditor having a mortgage or pledge of property of the debtor, or lien thereon, for securing the payment of a debt owing to him from the debtor, shall be allowed to vote any part of his claim at such meeting of creditors, unless he shall have first conveyed, released, or delivered up his said security to said marshal for the benefit of all creditors of said assignor.

At such meeting the marshal shall preside, and a majority in amount of demands present or represented by proxy shall control all questions and decisions. The creditors may adjourn such meeting from time to time, and may vote on all questions either in person or by proxy signed and acknowledged before any officer authorized to take acknowledgments, and filed with the marshal.

Election of assignee.

At such a meeting, or any adjournment thereof, the creditors may elect one or more assignees from their own number, in the place and stead of the marshal, and the person or persons so elected shall afterwards be the assignee or assignees under the provisions of this subchapter; and the marshal, by transfer in writing, acknowledged as required by section 1671, shall at once assign to such elected assignee or assignees, upon the trusts in this subchapter provided, all the property so assigned to him, and deliver possession thereof.

Post, p. 1341.

All recitals in such assignment by said marshal of notices of such meeting, and the holding thereof, and of the due election of such assignee or assignees, shall be prima facie proof of the facts recited.

Marshal's fees.

SEC. 1665. MARSHAL'S FEES.—The marshal shall, before the delivery of such assignment, be paid the expenses incurred by him, and fees in such amount as would by law be collectible if the property assigned had been levied upon and safely kept under attachment.

Powers and duties of elected assignee.

SEC. 1666. POWERS AND DUTIES OF ELECTED ASSIGNEE.—Thereupon, and after the record of such last-named assignment, as in this subchapter provided, such elected assignee or assignees shall take, and hold, and dispose of all such property and its proceeds, upon the trusts and conditions and for the purposes in this subchapter provided.

CROSS REFERENCES

Post, p. 1343. Assignee can not act until bond and inventory filed, see section 1679.

Post, p. 1344. Commissions and expenses of assignee, see section 1682.

Insolvency defined.

SEC. 1667. INSOLVENCY, WHAT.—A debtor is insolvent, within the meaning of this subchapter, when he is unable to pay his debts from his own means as they become due.

CROSS REFERENCE

Insolvency defined, see section 671. *Ante*, p. 1221.

Certain transfers not affected.

SEC. 1668. CERTAIN TRANSFERS NOT AFFECTED.—The provisions of this subchapter do not prevent a person residing in any state or country from making there, in good faith, and without intent to evade the laws of the Canal Zone, a transfer of property situated within it; but such person can not make a general assignment of property situated in the Canal Zone for the satisfaction of all his creditors, except as in this subchapter provided; nor do the provisions of this subchapter affect the power of a person, although insolvent, and whether residing within or without the Canal Zone, to transfer property in the Canal Zone, in good faith to a particular creditor, or creditors, or to some other person or persons in trust for such particular creditor or creditors for the purpose of paying or securing the whole or part of a debt owing to such creditor or creditors, whether in his or their own right or otherwise.

What debts may be secured.

SEC. 1669. WHAT DEBTS MAY BE SECURED.—An assignment for the benefit of creditors may provide for any subsisting liability of the assignor which he might lawfully pay, whether absolute or contingent.

Assignment when void.

SEC. 1670. ASSIGNMENT WHEN VOID.—An assignment for the benefit of creditors is void against any creditor of the assignor not assenting thereto, in the following cases:

First. If it give a preference of one debt or class of debts over another.

Second. If it tend to coerce any creditor to release or compromise his demand.

Third. If it provide for the payment of any claim known to the assignor to be false or fraudulent; or for the payment of more upon any claim than is known to be justly due from the assignor.

Fourth. If it reserve any interest in the assigned property, or in any part thereof, to the assignor, or for his benefit, before all his existing debts are paid.

Fifth. If it confer upon the assignee any power which, if exercised, might prevent or delay the immediate conversion of the assigned property to the purposes of the trust.

Sixth. If it exempt him from liability for neglect of duty or misconduct.

CROSS REFERENCES

Preferences by special partnership, see section 1138. *Ante*, p. 1277.
Preferences to creditors, see section 1657. *Ante*, p. 1338.

Assignment to be in writing.

SEC. 1671. ASSIGNMENT TO BE IN WRITING.—An assignment for the benefit of creditors must be in writing, subscribed by the assignor, or by his agent thereto authorized in writing, and the transfer by the marshal must also be in writing, subscribed by the marshal in his official capacity. Both such assignment and such transfer must be acknowledged, or proved and certified, in the mode prescribed by chapter 22 of this code, and be recorded as required by section 1676. *Ante*, p. 1164. *Post*, p. 1342.

CROSS REFERENCES

Form of assignment, see section 1663. *Ante*, p. 1339.
Recording of assignment, see sections 1672 and 1676. *Post*, p. 1342.

Compliance with provisions of last section necessary to validity of assignment.

SEC. 1672. COMPLIANCE WITH PROVISIONS OF LAST SECTION NECESSARY TO VALIDITY OF ASSIGNMENT.—Unless the provisions of section 1671 are complied with, an assignment for the benefit of creditors is void against every creditor of the assignor not assenting thereto.

CROSS REFERENCE

Ante, p. 1341. Recording of assignments, see sections 1671 and 1676.

Assignee takes, subject to rights of third parties.

SEC. 1673. ASSIGNEE TAKES, SUBJECT TO RIGHTS OF THIRD PARTIES.—An assignee for the benefit of creditors is not to be regarded as a purchaser for value, and has no greater rights than his assignor had, in respect to things in action transferred by the assignment.

Inventory required.

SEC. 1674. INVENTORY REQUIRED.—Within twenty days after an assignment is made for the benefit of creditors, the assignor must make and file, in the manner prescribed by section 1676, a full and true inventory, showing:

1. All the creditors of the assignor;

2. The place of residence of each creditor, if known to the assignor, or if not known, that fact must be stated;

3. The sum owing to each creditor and the nature of each debt or liability, whether arising on written security, account, or otherwise;

4. The true consideration of the liability in each case, and the place where it arose;

5. Every existing judgment, mortgage, or other security for the payment of any debt or liability of the assignor;

6. All property of the assignor at the date of the assignment, which is exempt by law from execution; and

7. All of the assignor's property at the date of the assignment, of every kind, not so exempt, and the encumbrances existing thereon, and all vouchers and securities relating thereto, and the value of such property according to the best knowledge of the assignor.

Affidavit of assignor to be filed with inventory.

SEC. 1675. AFFIDAVIT OF ASSIGNOR TO BE FILED WITH INVENTORY.—An affidavit must be made by every assignor executing an assignment for the benefit of creditors, to be annexed to and filed with the inventory mentioned in section 1674, to the effect that the same is in all respects just and true according to the best of such assignor's knowledge and belief.

If the assignor neglects or refuses to make and file such inventory and affidavit within said twenty days, the assignment shall not, for that reason, be affected in any way, but in that event the assignee or assignees elected by the creditors shall within twenty days thereafter make and file in the office of the registrar of property, a verified inventory of all assets received by them; and such assignee or assignees may at any time, or from time to time, after the transfer to them by the marshal, by petition to the district court, cause the assignor, by order or citation to appear before said court, or a commissioner or referee to be appointed by it, at a time and place to be designated in the order or citation, to be examined touching the matters mentioned in section 1674, and any other matters relative to the assignment, and to have with him all books of account, vouchers, and papers relating to the assigned property; and such court may by its order require the surrender to such assignee or assignees of such books, vouchers, and papers to be by them retained until their trust is fully completed and performed.

Recording assignment and filing inventory.

SEC. 1676. RECORDING ASSIGNMENT AND FILING INVENTORY.—An assignment for the benefit of creditors must be recorded, and the inventory required by section 1674 filed with the registrar of property.

CROSS REFERENCE

Ante, p. 1341. Recording of assignment, see sections 1671 and 1672.

When assignment void.

SEC. 1677. ASSIGNMENT, WHEN VOID.—An assignment for the benefit of creditors is void against creditors of the assignor and against purchasers and encumbrancers in good faith and for value unless it

is recorded as provided in this subchapter, and unless either the inventory required by section 1674, or the inventory required of the assignee or assignees by section 1675 is filed in the manner provided in this subchapter and within the time designated.

Ante, p. 1342.

Bond of assignees.

SEC. 1678. BOND OF ASSIGNEES.—No bond shall be given by the marshal, but he shall be liable on his official bond for the care and custody of the property while in his possession. Within forty days after date of the transfer by the marshal, the assignee must enter into a bond in such amount as may be fixed by the district judge, with sufficient sureties to be approved by such judge, and conditioned for the faithful discharge of the trust and the due accounting for all moneys received by the assignee, which bond must be filed in the same office with the inventory; and any assignee failing to comply with the provisions of this section may be removed by the above-named court on petition of the assignor or any creditor, and his successor appointed by such court.

Conditions of disposal and conversion.

SEC. 1679. CONDITIONS OF DISPOSAL AND CONVERSION; PUBLICATION OF NOTICE BY ASSIGNEE; DIVIDENDS; RIGHTS OF MORTGAGEE.—Until a verified inventory has been made and filed, either by the assignor or assignee, as required by the provisions of this subchapter, and the assignee has given the bond required by section 1678, such assignee has no authority to dispose of the property of the estate, or any part of it (except in the case of perishable property, which in his discretion he may dispose of at any time and receive the proceeds of sale thereof); nor has he power to convert the property, or the proceeds of any sale of perishable property, to the purposes of the trust.

Publication of notice by assignee.

Within ten days after the filing of his bond, the assignee must commence the publication (and such publication shall continue at least once a week for four weeks), in some newspaper of general circulation in the Canal Zone, of a notice to creditors of the assignor, stating the fact and date of the assignment, and requiring all persons having claims against the assignor to exhibit them, with the necessary vouchers, and verified by the oath of the creditor, to the assignee, at his place of residence or business, to be specified in the notice; and he shall also, within ten days after the first publication of said notice, mail a copy of such notice to each creditor whose name is given in the instrument of assignment, at the address therein given. After such notice is given, a copy thereof, with affidavit of due publication and mailing, must be filed with the registrar of property with whom the inventory has been filed, which affidavit shall be prima facie evidence of the facts stated therein.

Dividends.

At any time, or from time to time, after the expiration of thirty days from the first publication of said notice (provided the same shall also have been mailed as in this section provided), the assignee may, in his discretion, declare and pay dividends to the creditors whose claims have been presented and allowed. No dividend already declared shall be disturbed by reason of claims being subsequently presented and allowed; but the creditor presenting such claim shall be entitled to a dividend equal to the per cent already declared and paid, before any further dividend is made: *Provided, however*, That there be assets sufficient for that purpose: *And provided*, That the failure to present such claim shall not have resulted from his own neglect, and he shall attach to such claim a statement, under oath, showing fully why the same was not before presented.

Subsequent presentment of claims.

Provisos.
Sufficient assets.
Conditions.

When a creditor has a mortgage or pledge of property of the debtor, or a lien thereon, for securing the payment of a debt owing to him from the debtor, and shall not have conveyed, released, or delivered up such security to the marshal, as provided for by section 1664, he shall be admitted as a creditor only for the balance of the

Ante, p. 1340.

debt after deducting the value of such mortgage, pledge, or lien, to be ascertained by agreement between him and the assignee, or by a sale thereof, to be made in such manner as the district court shall direct; or the creditor may release or convey his claim to the assignee upon such property, and be admitted to prove his whole debt.

If the value of the property exceeds the sum for which it is so held as security, the assignee may release to the creditor the debtor's right of redemption thereon on receiving such excess; or he may sell the property, subject to the claim of the creditor thereon; and in either case the assignee and creditor, respectively, shall execute all writings necessary or proper to consummate the transaction. If the property is not sold or released, and delivered up, the creditor shall not be allowed to prove any part of his debt.

Accounting of assignee.

SEC. 1680. ACCOUNTING OF ASSIGNEE.—After six months from the date of an assignment for the benefit of creditors, the assignee may be required, on the petition of any creditor, to account before the district court.

Property exempt.

SEC. 1681. PROPERTY EXEMPT.—Property exempt from execution and insurance upon the life of the assignor, do not pass to the assignee by a general assignment for the benefit of creditors unless the instrument specially mentions them and declares an intention that they should pass thereby.

Commissions of assignee.

SEC. 1682. COMMISSIONS OF ASSIGNEES.—The elected assignee or assignees for the benefit of creditors shall be entitled to a reasonable commission on assignments, to be fixed by the court. Such assignee or assignees shall also be entitled to all necessary expenses in the management of their trust.

CROSS REFERENCE

Ante, p. 1340.

Commissions and expenses of marshal, see section 1665.

Assignees protected for acts done in good faith.

SEC. 1683. ASSIGNEES PROTECTED FOR ACTS DONE IN GOOD FAITH.—An assignee for the benefit of creditors is not to be held liable for his acts, done in good faith in the execution of the trust, merely for the reason that the assignment is afterward adjudged void.

Assent of creditor necessary to modification of assignment.

SEC. 1684. ASSENT OF CREDITOR NECESSARY TO MODIFICATION OF ASSIGNMENT.—An assignment for the benefit of creditors which has been executed and recorded so as to transfer the property to the marshal, or a transfer by the marshal to the elected assignee or assignees which has been executed and recorded, can not afterwards be modified or canceled by the parties without the consent of the assignor and of every creditor affected thereby.

NUISANCE.

CHAPTER 75.—NUISANCE

General principles.

GENERAL PRINCIPLES

Definition.

SEC. 1685. NUISANCE, WHAT.—Anything which is injurious to health, or is indecent or offensive to the senses, or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, pay [1], stream, canal, or basin, or any public park, square, street, or highway is a nuisance.

CROSS REFERENCE

See, also, Criminal Code, sections 251 and 252; and Act Canal Commission No. 9, Sept. 2, 1904, section 2.

Public nuisance.

SEC. 1686. PUBLIC NUISANCE.—A public nuisance is one which affects at the same time an entire community or neighborhood, or

[1] So in original.

any considerable number of persons, although the extent of the annoyance or damage inflicted upon individuals may be unequal.

CROSS REFERENCES

See, also, Criminal Code, sections 251 and 252.
Abating public nuisance, see sections 1694 and 1695.
Public nuisance, see sections 1690 et seq.

Private nuisance.

SEC. 1687. PRIVATE NUISANCE.—Every nuisance not included in the definition of section 1686 is private.

CROSS REFERENCE

Private nuisance, see section 1696. *Ante*, p. 1344.

What is not deemed nuisance.

SEC. 1688. WHAT IS NOT DEEMED A NUISANCE.—Nothing which is done or maintained under the express authority of law can be deemed a nuisance.

Abatement of, not to preclude action thereon.

SEC. 1689. ABATEMENT DOES NOT PRECLUDE ACTION.—The abatement of a nuisance does not prejudice the right of any person to recover damages for its past existence.

PUBLIC NUISANCES

Public nuisances.

Lapse of time does not legalize.

SEC. 1690. LAPSE OF TIME DOES NOT LEGALIZE.—No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.

CROSS REFERENCE

Public nuisance, defined, see section 1686. *Ante*, p. 1344.

Remedies against.

SEC. 1691. REMEDIES AGAINST PUBLIC NUISANCE.—The remedies against a public nuisance are:

1. Information;
2. A civil action;
3. Abatement.

How regulated.

SEC. 1692. REMEDY REGULATED, HOW.—The remedy by information is regulated by the Criminal Code.

CROSS REFERENCE

See Criminal Code, sections 251 and 252.

Remedies for public nuisance.

SEC. 1693. REMEDIES FOR PUBLIC NUISANCE.—A private person may maintain an action for a public nuisance, if it is specially injurious to himself, but not otherwise.

How abated.

SEC. 1694. HOW ABATED.—A public nuisance may be abated by any public body or officer authorized thereto by law.

PRIVATE NUISANCES

Remedies for private nuisance.

SEC. 1696. REMEDIES FOR PRIVATE NUISANCE.—The remedy against a private nuisance is a civil action.

MAXIMS OF JURISPRUDENCE.

CHAPTER 76.—MAXIMS OF JURISPRUDENCE

Application.

SEC. 1697. The maxims of jurisprudence hereinafter set forth are intended not to qualify any of the foregoing provisions of this code, but to aid in their just application.

SEC. 1698. When the reason of a rule ceases, so should the rule itself.

SEC. 1699. Where the reason is the same, the rule should be the same.

SEC. 1700. One must not change his purpose to the injury of another.

SEC. 1701. Anyone may waive the advantage of a law intended solely for his benefit. But a law established for a public reason cannot be contravened by a private agreement.

SEC. 1702. One must so use his own rights as not to infringe upon the rights of another.

SEC. 1703. He who consents to an act is not wronged by it.

SEC. 1704. Acquiescence in error takes away the right of objecting to it.

SEC. 1705. No one can take advantage of his own wrong.

SEC. 1706. He who has fraudulently dispossessed himself of a thing may be treated as if he still had possession.

SEC. 1707. He who can and does not forbid that which is done on his behalf is deemed to have bidden it.

SEC. 1708. No one should suffer by the act of another.

SEC. 1709. He who takes the benefit must bear the burden.

SEC. 1710. One who grants a thing is presumed to grant also whatever is essential to its use.

SEC. 1711. For every wrong there is a remedy.

SEC. 1712. Between those who are equally in the right or equally in the wrong, the law does not interpose.

SEC. 1713. Between rights otherwise equal, the earliest is preferred.

SEC. 1714. No man is responsible for that which no man can control.

SEC. 1715. The law helps the vigilant, before those who sleep on their rights.

SEC. 1716. The law respects form less than substance.

SEC. 1717. That which ought to have been done is to be regarded as done, in favor of him to whom, and against him from whom, performance is due.

SEC. 1718. That which does not appear to exist is to be regarded as if it did not exist.

SEC. 1719. The law never requires impossibilities.

SEC. 1720. The law neither does nor requires idle acts.

SEC. 1721. The law disregards trifles.

SEC. 1722. Particular expressions qualify those which are general.

SEC. 1723. Contemporaneous exposition is in general the best.

SEC. 1724. The greater contains the less.

SEC. 1725. Superfluity does not vitiate.

SEC. 1726. That is certain which can be made certain.

SEC. 1727. Time does not confirm a void act.

SEC. 1728. The incident follows the principal, and not the principal the incident.

SEC. 1729. An interpretation which gives effect is preferred to one which makes void.

SEC. 1730. Interpretation must be reasonable.

SEC. 1731. Where one of two innocent persons must suffer by the act of a third, he, by whose negligence it happened, must be the sufferer.

REPEALS.

CHAPTER 77.—REPEALS

Codes, orders, etc., designated.

SEC. 1732. REPEAL OF EXISTING LAWS.—The following codes, laws, executive orders, and parts thereof, are hereby repealed:

The Civil Code of the Republic of Panama and Amendatory Laws, the Commercial Code of the Republic of Panama, and all other laws, not heretofore repealed, which were continued in force in the Canal Zone by the Executive Order of May 9, 1904;

Sections 410 to 415, inclusive, of the Criminal Code of the Canal Zone, enacted by the Isthmian Canal Commission September 3, 1904;

Executive Order of August 20, 1910, "Prescribing method for married women to convey or mortgage real estate, and authorizing certain officers to administer oaths;" Executive Order No. 1239.

Executive Order of February 2, 1911, "To provide a method of executing and recording deeds, and to repeal the Executive Order dated March 12, 1907, effective April 15, 1907, relating to the same subject;" Executive Order No. 1295.

And all other acts, ordinances, orders, and parts thereof, in conflict herewith.

Approved, February 27, 1933.

[CHAPTER 129.]

JOINT RESOLUTION

Establishing the United States Georgia Bicentennial Commission, and for other purposes.

February 27, 1933.
[S. J. Res. 223.]
[Pub. Res., No. 59.]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby established a commission, to be known as the United States Georgia Bicentennial Commission, for the purpose of participation by the United States in the observance of the two-hundredth anniversary of the founding of the Georgia colony, such commission to be composed of twenty-one commissioners, as follows: Nine persons to be appointed by the President of the United States, six Senators to be appointed by the President of the Senate, and six Members of the House of Representatives to be appointed by the Speaker of the House of Representatives. The members of the commission shall serve without compensation and shall select a chairman from among their number.

United States Georgia Bicentennial Commission.
Establishment, purpose, etc.

Composition.

No compensation, etc.

Approved, February 27, 1933.

[CHAPTER 130.]

AN ACT

To authorize the payment of taxes and assessments on family dwelling houses in the District of Columbia in quarterly installments, and for other purposes.

February 28, 1933.
[H. R. 14392.]
[Public, No. 377.]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each fiscal year, commencing with the fiscal year ending June 30, 1934, the assessor of the District of Columbia shall send to the owner of each family dwelling house occupied by such owner upon written application therefor an itemized statement of the taxes payable with respect to such dwelling house not less than thirty days prior to the time when the first installment of real-estate taxes for such fiscal year becomes due and payable. Such statement shall include all real-estate taxes which are due and payable in such fiscal year and all installments of special assessments which have been levied, charged, or assessed prior to, and are due and payable in, such fiscal year, with respect to the family dwelling house occupied by the owner. Such taxes and assessments shall be payable, at the election of the taxpayer, in four equal installments, in the months of September, December, March, and June, and no interest shall be payable with respect to any such installment unless it is unpaid after the time it is due. Any real-estate tax or special assessment or any installment thereof with respect to any family dwelling house occupied by the owner thereof not included in such statement shall not be due or payable during the fiscal year for which the statement is sent; and

Family dwelling houses, D. C.

Quarterly payment of taxes, etc., on.

Statement of taxes, furnished on request.

Contents of.

Payments; when to be made; interest provisions.